THE FINANCIAL SERVICES COMMISSION OF ONTARIO

PENSION BULLETIN

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The Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 as amended, the Pension Benefits Act, R.S.O. 1990, c. P.8 as amended, R.R.O. 1990, Reg. 909 as amended, the terms of the pension plan and trust, if any, and the policies, procedures and practices of FSCO should be considered in determining specific legal requirements, and professional advice should be sought.

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GENERAL ANNOUNCEMENTS

Pension Division – Staff Changes

Bradley Mockford is the Executive Assistant to K. David Gordon, the newly appointed Deputy Superintendent, Pensions. **Dean Therrien** assumes the role of Co-ordinator, Administrative and Support Services. **Marco Ciavatta** assumes the role of Compliance and Enforcement Officer, Filings. **Jason Gartshore** was appointed to the position of Compliance Assistant. **John Khing Shan**, **Marilyn Johnson** and **Pauline Stevens** assume the role of Assistant Pension Officers. **Carol Nitkin** has assumed the role of Pension Analyst. **Dorothy Cottrell** joins the Pension Policy Unit.

Contacts for Plan Specific Enquiries

Contact Name	Title	Phone Number	Allocation Alpha Range
Jaan Pringi	Sr. Pension Officer	416-226-7826	
Gulnar Chandani	Pension Officer	416-226-7770	#'s - Associated
Penny McIlraith	Pension Officer	416-226-7822	Associates - Bulk
Tim Thomson	Pension Officer	416-226-7829	Bull - Cem
Irene Mook-Sang	Pension Officer	416-226-7824	Cen - Cz
Kathy Carmosino	Pension Officer	416-226-7823	I - King
Preethi Anthonypillai	Pension Officer	416-226-7812	Kinh - Mark
Gino Marandola	Sr. Pension Officer	416-226-7820	
Calvin Andrews	Pension Officer	416-226-7768	Gko - H
Jeff Chuchman	Pension Officer	416-226-7807	D - Em
John Graham	Pension Officer	416-226-7774	Marl - Nes
Julina Lam	Pension Officer	416-226-7815	Net - Pep
Anna Vani	Pension Officer	416-226-7833	Peq - Rob
Rosemin Jiwa Jutha	Sr. Pension Officer	416-226-7816	
Chantal Laurin	Pension Officer	416-226-7808	En - Gkn
Peter Dunlop	Pension Officer	416-226-7860	Roc - Sons
Hae-Jin Kim	Pension Officer	416-226-7876	Sont - The Drop
David Allan	Pension Officer	416-226-7803	The Droq - Unicorp
Leonard Peter	Pension Officer	416-226-7855	Unicorp - Z

FSCO Pension Advisory Committees - Membership as at November 2001

Accounting and Assurance Advisory Committee

Besler, Jason
Cassidy, Jim
Eigl, Charlie **(Vice Chair)**
Finn, Mary Ann
Holland, Marie
Hunter, Don
Koehli, Ron
Racanelli, Nick
Turner, Eric
Wade, Jack
Walker, Albert
Wilkinson, Don **(Chair)**

Actuarial Advisory Committee

Bicknell, Arthur
Chang, Paul
Cohen, Lorne **(Vice Chair)**
DiRisio, Wendy
Figueiredo, Karen **(Chair)**
Hart, David
Hutchinson, Laurie
Levy, Thomas
Pitcher, Clare
Robertson, Marcus
Rosenblat, Rob

Investment Advisory Committee

Bertram, Bob
Franks, Jim
Grantier, Bruce
Kyle, Claire
Marks, Josephine
Mercier, Eileen
Phelps, Tom **(Vice Chair)**
Rafos, Bob
Schaefer, Klaus
Wirth, Alf **(Chair)**

Legal Advisory Committee

Bastein, Leigh Ann **(Chair)**
Forgie, Jeremy
Gold, Murray **(Vice Chair)**
Hanson, Bernie
Healy, Priscilla
Lokan, Andrew
Mark, Rose
Nachshen, Gary
O'Reilly, Hugh
Picard, Mary
Rienzo, Doug

HEARINGS/COURT MATTERS

Enforcement Matters

Charges laid under the *Pension Benefits Act.*

The information set out below is current to November 26, 2001.

i. Canadian Corporation Creation Center (CCCC)

Charges under the *Pension Benefits Act* were laid against the CCCC Pension Plan administrator, the individual trustees, CCCC and related companies on September 12, 2001. The charges relate to a scheme whereby locked in accounts were assigned to the defendant companies in return for the promise to extend a loan to the locked in account holder. A first appearance occurred on October 9, 2001. The matter has been put over to December 6, 2001.

ii. Daybar Industries Limited

Charges were laid in respect of two pension plans administered by Daybar. In one pension plan, Daybar was charged for failing to file the annual information returns and Pension Benefits Guarantee Fund (PBGF) assessments for two separate years and for failing to pay the filing fee associated with another annual information return. In respect of the other plan, Daybar was charged for failing to file an annual information return. On August 21, 2001, Daybar pleaded guilty to the charges. A total fine of $3000 in respect of all charges was levied.

iii. Forum Corporation of Canada Ltd.

Charges were laid for failing to remit the filing fee in respect of an annual information return. On August 21, 2001, Forum pleaded guilty to the charges. A total fine of $1000 in respect of all charges was levied.

iv. Student Federation of the University of Ottawa

Charges were laid for failing to file a financial statement. The first appearance on the charges occurred on August 21, 2001. The matter was put over until November 13, 2001. On November 13, 2001, the Student Federation of the University of Ottawa pleaded guilty to all charges and a total fine of $500 was levied on all charges.

v. National Press Club of Canada

Charges were laid for failing to file financial statements. The first appearance for the charges occurred on August 21, 2001. The matter was put over until November 13, 2001. On November 13, 2001, the National Press Club of Canada pleaded guilty to all charges and a total fine of $3000 was levied on all charges.

vi. Visentin Steel Fabricators Ltd.

Charges were laid for failing to file annual information returns. The first appearance for the charges occurred on August 21, 2001. The matter was put over until November 13, 2001. On November 13, 2001, the matter was put over for a third appearance now scheduled for January 15, 2002.

vii. 9007-7876 Quebec Ltd.

Charges were laid for failing to file annual information returns, PBGF assessments, financial statements, and an actuarial report. The first appearance for the charges occurred on August 21, 2001. The matter was put over until November 13, 2001. On November 13, 2001, 9007-7876 Quebec Ltd. pleaded guilty to all charges and a total fine of $5000 was levied on all charges.

viii. Kendan Manufacturing Limited

Charges were laid for failing to file an annual information return and to pay the PBGF assessments for two consecutive years. The first appearance for the charges occurred on August 21, 2001. The matter was put over until November 13, 2001. On November 13, 2001, the matter was put over for a third appearance now scheduled for January 15, 2002.

Court Matters

The information set out below is current to November 26, 2001.

i. Régime de Retraite des Employés et Membres de Canadian Corporation Creation Center, Registration Number 1062363 (the "CCCC Plan")

FSCO is intervening in a proceeding before the Québec Superior Court for a judgement regarding the ownership of funds contained in certain bank accounts held at a Montreal branch of the National Bank of Greece (Canada). The basis for FSCO's intervention is that the accounts contain funds that are attributable to the CCCC Pension Plan. Effective August 3, 2001, the Deputy Superintendent, Pensions, is acting as administrator of the CCCC Pension Plan. On October 19, 2001, the Court granted FSCO's request for intervener status. In addition, the Court granted FSCO's separate motion for seizure before judgement freezing the funds in the accounts.

ii. Retirement Income Plan Salaried Employees of Weavexx Corp., Registration Number 264663 (the "Weavexx Plan")

On May 30, 2000, the Superior Court of Justice, Ontario Divisional Court, granted an application for judicial review brought by a group of former members of the Weavexx Plan to set aside the Superintendent of Pensions' August 1997 consent to a transfer of assets from the Weavexx Plan to the BTR Pension Plan for Canadian Employees. The decision of the Court was based on the conclusion that the Superintendent had exceeded his jurisdiction in failing to consider the issues of surplus, trust and a requested partial wind up of the Weavexx Plan.

An addendum issued by the Court on November 16, 2000, stated that the return of assets to the Weavexx Plan was not to be the subject of a Financial Services Tribunal hearing and that any decision made by the Superintendent of Financial Services in respect of the requested partial wind up was to be referred to the Tribunal for a hearing. The Court also awarded the applicants $54,294.06 in costs.

The Ontario Court of Appeal granted both the Superintendent and BTR Inc. leave to appeal these decisions on February 26, 2001. Both appeals were heard on November 19, 2001. The Court reserved its decision in both appeals.

iii. Colgate-Palmolive Canada Inc. Pension Plan for Salaried and Non-Union Hourly Employees

On November 29, 2000, the Superior Court of Justice, Ontario Divisional Court, dismissed an application for judicial review brought by a group of former members of the Colgate-Palmolive Canada Inc. Pension Plan for Salaried and Non-Union Hourly Employees, who wanted to set aside the Superintendent of Pensions' December 1995 consent to a transfer of assets from the Bristol-Myers Canada Inc. Retirement Income Plan to the Colgate Plan. The applicants also wanted the Superintendent's August 1994 approval of a partial wind up report filed by the Colgate Plan set aside.

The Court found that the applicants, as members of the importing pension plan, had no right to object to the transfer; any right to object would have been exercised when the amendment to the Colgate Plan respecting the transfer was filed. The Court also found that there was no evidence to support a partial wind up involving additional former members of the Colgate Plan.

On February 26, 2001, the Ontario Court of Appeal granted leave to appeal to the applicants. The Court ordered that this appeal be heard together with the Weavexx appeal. Both appeals were heard on November 19, 2001. The Court reserved its decision in both appeals.

iv. Pension Plan for Employees of Monsanto Canada Inc., Registration Number 341230, FST File P0013-1998

On November 30, 1998, the Superintendent issued a Notice of Proposal to Refuse to Approve a Partial Wind Up Report filed by Monsanto in respect of a 1997 plant closure. The grounds for the refusal were: (a) the wind up report did not deal with the surplus distribution on partial wind up; (b) the payment of benefit enhancements on wind up to certain members constituted an inequitable distribution of surplus, and an indirect payment of surplus to the employer without following the statutory requirements for the payment of surplus to the employer; and (c) the wind up report provided that the funds relating to benefits of those in the partial wind up group were to remain in the pension plan's fund rather than being distributed by way of a purchase of annuities.

On December 31, 1998, Monsanto Canada Inc. ("Monsanto") requested a hearing before the Financial Services Tribunal in respect of the Notice of Proposal.

The hearing was held on January 10 - 12 and February 7 - 11, 2000. The Tribunal issued majority and minority Reasons dated April 14, 2000, which were published in Volume 9, Issue 2 of the Pension Bulletin. In the result, the Tribunal directed the Superintendent to approve the Partial Wind Up Report.

The decision of the Tribunal was appealed to the Superior Court of Justice, Ontario Divisional Court. On March 19, 2001, the Court allowed the appeal on the basis of its conclusion that the first ground set out in the Notice of Proposal ((a) above) was a proper basis for the Superintendent to refuse to approve the Partial Wind Up Report and that the Superintendent was entitled to rely on that ground. In this respect, it adopted the minority Reasons of the Tribunal and directed the Superintendent to carry out the Notice of Proposal to Refuse to Approve.

The Court found that the Financial Services Tribunal majority's interpretation of subsection 70(6) of the *Pension Benefits Act* was unreasonable. The Court also found that the Financial Services Tribunal majority's finding on legitimate expectation misinterpreted the legislation and was an error in law.

Monsanto, the Association of Canadian Pension Management, and the National Trust Company each sought leave to appeal this decision. On June 28, 2001, the Ontario Court of Appeal granted leave. The appeal has been scheduled for April 29 and 30, 2002.

LEGISLATIVE CHANGES/REGULATORY POLICIES

Financial Services Commission of Ontario
Commission des services financiers de l'Ontario

SECTION:	Benefits
INDEX NO.:	B100-851
TITLE:	Joint and Survivor Pension Waived - PBA s. 44
APPROVED BY:	Superintendent of Financial Services
PUBLISHED:	FSCO website (December 2001)
EFFECTIVE DATE:	January 1, 2002
REPLACES:	B100-850

This policy replaces B100-850 ("Survivor Benefit Waived - PBA, R.S.O. 1990, s. 44") as of the effective date of this policy.

Note: Where this policy conflicts with the Financial Services Commission of Ontario Act, 1997 Act, 1997, S.O. 1997, c. 28 ("FSCO Act"), Pension Benefits Act, R.S.O. 1990, c. P.8 ("PBA") or Regulation 909, R.R.O. 1990 ("Regulation"), the FSCO Act, PBA or Regulation govern.

If a joint and survivor pension is waived, how should the pension amount payable to the former member be determined?

Under section 44 of the PBA, a pension paid to a former member who has a spouse or same-sex partner on the date that payment of the first instalment of the pension is due must provide a survivor benefit upon the death of the former member or the spouse or same-sex partner, whichever occurs first, which is not less than 60% of the pension amount payable during their joint lives. This entitlement to receive a pension in the form of a joint and survivor pension may be waived in accordance with section 46 of the PBA.

Where a joint and survivor pension is waived, the pension amount payable to the former member should not be less than the single life pension determined as if the former member does not have a spouse or same-sex partner. Where a pension plan wishes to provide a greater amount, it must specifically provide for such in the plan text.

Financial Services Commission of Ontario
Commission des services financiers de l'Ontario

SECTION: Life Income Fund/Locked-In Retirement Account

INDEX NO.: L050-658

TITLE: 2002 LIF Maximum Withdrawal Amount Table

APPROVED BY: Superintendent of Financial Services

PUBLISHED: FSCO website (December 2001)

EFFECTIVE DATE: January 1, 2002

Note: Where this policy conflicts with the Financial Services Commission of Ontario Act, 1997, S.O. 1997, c. 28 ("FSCO Act"), Pension Benefits Act, R.S.O. 1990, c. P.8 ("PBA") or Regulation 909, R.R.O. 1990 ("Regulation"), the FSCO Act, PBA or Regulation govern.

The attached table has been prepared by the Financial Services Commission of Ontario ("FSCO"). Additional copies of this table and copies of articles published by FSCO about the Ontario LIF are available on FSCO's website at www.fsco.gov.on.ca, or may be picked up in person at the reception desk, 4th Floor, 5160 Yonge Street, North York, Ontario.

Interest assumptions used in the table on next page:

(1) 6.00%, which represents the *greater* of the CANSIM B14013 rate for November 2001 (5.66%) and 6.00% for the first 15 years, and

(2) 6.00% for the years remaining to the end of the year in which the LIF owner attains 90 years of age. (Assumption to age 90 is for the purpose of maximum withdrawal calculation only. The balance of a LIF must be used to purchase a life annuity by the end of the year in which the LIF owner attains 80 years of age.)

Percentages shown must be prorated for the initial fiscal year if less than twelve months. Part of a month is treated as a full month.

2002 Maximum Annual Withdrawal Amount Table for an Ontario Life Income Fund (LIF)

Age at January 12, 2002	New Age During 2002	Years to End of Year Age 90 is Attained	Maximum Withdrawal as a Percentage of the LIF Balance as at January 1, 2002*
48	49	42	6.19655%
49	50	41	6.23197%
50	51	40	6.26996%
51	52	39	6.31073%
52	53	38	6.35454%
53	54	37	6.40164%
54	55	36	6.45234%
55	56	35	6.50697%
56	57	34	6.56589%
57	58	33	6.62952%
58	59	32	6.69833%
59	60	31	6.77285%
60	61	30	6.85367%
61	62	29	6.94147%
62	63	28	7.03703%
63	64	27	7.14124%
64	65	26	7.25513%
65	66	25	7.37988%
66	67	24	7.51689%
67	68	23	7.66778%
68	69	22	7.83449%
69	70	21	8.01930%
70	71	20	8.22496%
71	72	19	8.45480%
72	73	18	8.71288%
73	74	17	9.00423%
74	75	16	9.33511%
75	76	15	9.71347%
76	77	14	10.14952%
77	78	13	10.65661%
78	79	12	11.25255%
79	80	11	11.96160%

* The maximum annual withdrawal amount percentage is calculated on the basis of a twelve-month fiscal year to December 31, 2002, using the interest assumptions above.

SUPERINTENDENT OF FINANCIAL SERVICES

Notices of Proposal to Make an Order

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended, c. 28 (the *"Act"*);

AND IN THE MATTER OF a Refusal by the Superintendent of Financial Services to make an Order under section 87 of the *Act* respecting a request by Jim MacKinnon relating to the **Labourers' Pension Fund of Central and Eastern Canada, Registration Number 573188** (the "Plan");

TO: **Jim MacKinnon**
P.O. Box 354
Thamesford, Ontario
N0M 2M0

Notice of Proposal to Refuse to Make an Order

I PROPOSE TO REFUSE TO MAKE AN ORDER under section 87 of the *Act*, with respect to Mr. MacKinnon's claim that he is entitled to receive a "Thirty and Out" pension benefit from the Plan.

I PROPOSE TO REFUSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. The Plan is a multi-employer defined benefit plan. It was established by way of a trust agreement dated February 23, 1972.
2. Mr. MacKinnon became a member of the Plan in November 1974. At that time, he was employed by the Electrical Power Sector Contractors' Association ("EPSCA"), which contributed to the Plan under the terms of a collective agreement between it and the Labourers' International Union of North America ("L.I.U.N.A."), Local 1059 ("Local 1059").
3. Mr. MacKinnon left his employment at EPSCA in July 1982. From August 1982 until the present, he has been employed as the Business Manager of Local 1059 of L.I.U.N.A. Local 1059 made pension contributions to the Plan on Mr. MacKinnon's behalf, until March 1, 1996.
4. After March 1, 1996, due to changes in the *Income Tax Act* and the fact that he was a member of another pension plan sponsored by the L.I.U.N.A., Local 1059 stopped contributing to the Plan on Mr. MacKinnon's behalf. As of March 1,1996, Mr. MacKinnon had accumulated 30.25 years of credited service in the Plan.
5. Prior to 1997, the Plan had a "Thirty and Out" pension benefit. This benefit allowed a member to retire on a full pension after 30 years of credited service in the Plan, regardless of the member's age.
6. On March 12, 1997, Mr. MacKinnon applied for the "Thirty and Out" pension. He claims that he was entitled to receive the pension at that time, notwithstanding the fact that he continued, without interruption, in his employment as Business Manager of Local 1059.
7. Mr. MacKinnon claims he is entitled to the "Thirty and Out "pension from the Plan because, as of March 1, 1996, under the terms of the Plan, he is no longer an "employee" of Local 1059. He also claims he can no longer be considered "employed" (i.e. receiving "remuneration to which the pension plan is related") within the meaning of the *Act*.

8. The Plan has taken the position that Mr. MacKinnon is not entitled to a retirement pension because section 2.04(b) of the Plan provides that an employee in Mr. MacKinnon's situation can only cease participation in the Plan "on the day he terminates employment with an Employer". Since Mr. MacKinnon had not terminated his employment with his employer as of March 1, 1996, he remained a participant in the Plan and was not eligible to retire and receive a pension.
9. Section 38 of the *Act* provides that a person who is a member of a multi-employer pension plan is entitled to terminate his or her membership in the plan if no contributions are paid to the pension fund on his or her behalf for twenty-four consecutive months, or such shorter period of time as is specified in the pension plan.
10. Since no shorter time period is specified in the Plan, Mr. MacKinnon was entitled to terminate his membership in the Plan after the expiry of twenty-four months with no contributions paid on his behalf. Mr. MacKinnon's earliest termination date would thus be March 1, 1998.
11. Accordingly, under subsection 38(2) of the *Act*, Mr. MacKinnon would be deemed to have terminated his employment on March 1, 1998. He would be entitled to any pension or portability options available under the Plan or the *Act* at that time.
12. On July 1, 1997, the Plan was amended so as to eliminate the "Thirty and Out" retirement option. A further amendment provided for early retirement upon a member's attaining 55 years of age and having 30 years credited service. Mr. MacKinnon claims these amendments are not valid because of an alleged failure to comply with the notice requirements for adverse amendments set out in section 26 of the *Act*.
13. Subsection 26(4) of the *Act* provides, at paragraph (c), that the Superintendent need not require the transmittal of notices if the amendment is in respect of a multi-employer pension plan established pursuant to a collective agreement or trust agreement. Accordingly, the Plan's failure to transmit notice of the amendment does not constitute a contravention of the *Act* and does not invalidate the amendment in question.
14. Similarly, the amendment is not void under subsection 14(1) of the *Act* (for purporting to reduce the amount or commuted value of a pension benefit, deferred pension or ancillary benefit accrued prior to the date of the amendment) because the amendment in question is in respect of a multi-employer pension plan and subsection 14(2) of the *Act* provides that subsection (1) does not apply in respect of a multi-employer pension plan established pursuant to a collective agreement or trust agreement.
15. In March 1998, when Mr. MacKinnon may be deemed to have terminated his employment, the "Thirty and Out" retirement option was no longer available to him, as it had been validly eliminated by the Plan amendment of July 1, 1997.
16. In refusing to grant Mr. MacKinnon a "Thirty and Out" pension, the Plan administrators have administered the Plan in compliance with requirements of the *Act*, the Regulations, and the filed documents in respect of which the Superintendent of Financial Services (the "Superintendent") has issued a certificate of registration.

17. Subsection 87(2) of the *Act* allows the Superintendent to make an order only if the Superintendent is of the opinion, upon reasonable and probable grounds, that the pension plan or fund is not being administered in accordance with the *Act*, the regulations or the pension plan.

18. Such further and other grounds as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act*, if within thirty (30) days after this Notice of Proposal to Refuse to Make an Order is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, Ontario
M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL TO REFUSE TO MAKE AN ORDER IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at North York, Ontario, this 20th day of June, 2001.
Dina Palozzi
Chief Executive Officer and
Superintendent of Financial Services

cc: Labourers' Pension Fund of Central and Eastern Canada

Labourers' International Union of North America, Local 1059

[1]NOTE – PURSUANT to section 112 of the *Act* any notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

IN THE MATTER OF the *Pension Benefits Act,* R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997,* R.S.O. 1997, c. 28 (the *"Act"*);

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make a Declaration under Section 83 of the *Pension Benefits Act,* as amended by the *Financial Services Commission of Ontario Act, 1997,* S.O. 1997, c. 28, respecting the **Royal Oak Mines Inc. Pension Plan for Timmins Salaried Employees, Registration Number 0937458** (the "Pension Plan");

TO: **Morneau Sobeco**
1500 Don Mills Road
Suite 500
Toronto, Ontario
M3B 3K4

Attention: Mr. Al Kiel
Partner
Agent for Deloitte & Touche Inc. in its capacity as Administrator of the Royal Oak Mines Inc. Pension Plan for Timmins Salaried Employees;

AND TO: **Royal Oak Mines Inc.**
P.O. Box 2010
Timmins, Ontario
P4N 7X7

Attention: Mrs. Rachel A. Pineault
Corporate Manager,
Pensions and Benefits
Employer

AND TO: **PricewaterhouseCoopers Inc.**
145 King Street West
Toronto, Ontario
M5H 1V8

Attention: Ms. Louisa Blunda
Interim Receiver and Manager,
Van Dresser Limited

Notice of Proposal to Make a Declaration

WHEREAS:

1. The Royal Oak Mines Inc. Pension Plan for Timmins Salaried Employees, Registration No. 0937458 (the "Pension Plan"), is registered under the *Pension Benefits Act,* R.S.O. 1990, c. P.8 as amended by the *Financial Services Commission of Ontario Act, 1997,* c. 28, (the *"Act"*); and
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the *Act* or the regulations made thereunder; and
3. The Pension Plan Administrator has filed a request with the Superintendent of Financial Services for the Superintendent to issue an order under Section 69 of the *Pension Benefits Act* to wind up the Pension Plan effective February 14, 2000.
4. The Superintendent of Pensions appointed Deloitte & Touche Inc. as the administrator (the "Administrator") of the Pension Plan on October 13, 1999.

I PROPOSE TO CONSIDER TO MAKE A DECLARATION, pursuant to section 83 of the *Act,* that the Guarantee Fund applies to the Pension Plan for the following reasons:

1. The actuarial report prepared as of March 31, 1999, indicated that the Pension Plan was underfunded on a solvency basis as at that date in that the total value of its assets was not sufficient to pay the total actuarial

value of benefits to that date. Furthermore, the March 31, 2001 cost certificate filed by the Administrator confirms that there have not been any events that would lead to the elimination of the deficit reported by the March 31, 1999 actuarial valuation.

2. PricewaterhouseCoopers Inc. was appointed Interim Receiver and Manager of Royal Oak Mines Inc. on April 16, 1999.
3. The Interim Receiver and Manager of Royal Oak Mines Inc. has advised the Administrator that there are no assets available from the estate of Royal Oak Mines Inc. for the Pension Plan.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act*, if within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, Ontario
M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at North York, Ontario, this 20th day of June, 2001.
Dina Palozzi
Chief Executive Officer and
Superintendent of Financial Services

[1] NOTE – PURSUANT to section 112 of the *Act* any notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, R.S.O. 1997, c. 28;

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28, respecting the **Royal Oak Mines Inc. Pension Plan for Timmins Hourly Employees, Registration Number 0937466** (the "Pension Plan");

TO: **Morneau Sobeco**
1500 Don Mills Road
Suite 500
Toronto, Ontario
M3B 3K4

Attention: Mr. Al Kiel
Partner
Agent for Deloitte & Touche Inc. in its capacity as Administrator of the Royal Oak Mines Inc. Pension Plan for Timmins Salaried Employees;

AND TO: **Royal Oak Mines Inc.**
P.O. Box 2010
Timmins, Ontario
P4N 7X7

Attention: Mrs. Rachel A. Pineault
Corporate Manager,
Pensions and Benefits
Employer

AND TO: **PricewaterhouseCoopers Inc.**
145 King Street West
Toronto, Ontario
M5H 1V8

Attention: Ms. Louisa Blunda
Interim Receiver and Manager,
Van Dresser Limited

AND TO: **United Steelworkers of America**
Local 4440
57 Mountjoy Street South
Timmins, Ontario
P4N 1S7

Attention: Mr. Rick Chopp
President
Union

Notice of Proposal to Make a Declaration

WHEREAS:

1. The Royal Oak Mines Inc. Pension Plan for Timmins Hourly Employees, Registration No. 0937466 (the "Pension Plan"), is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P.8 as amended by the *Financial Services Commission of Ontario Act, 1997*, c. 28, (the *"Act"*); and
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the *Act* or the regulations made thereunder; and
3. The Pension Plan Administrator has filed a request with the Superintendent of Financial Services for the Superintendent to issue an order under Section 69 of the *Pension Benefits Act* to wind up the Pension Plan effective December 31, 1999.
4. The Superintendent of Pensions appointed Deloitte & Touche Inc. as the administrator (the "Administrator") of the Pension Plan on October 13, 1999.

I PROPOSE TO CONSIDER TO MAKE A DECLARATION pursuant to section 83 of the *Act*, that the Guarantee Fund applies to the Pension Plan **FOR THE FOLLOWING REASONS:**

1. The actuarial report prepared as of March 31, 1999, indicated that the Pension Plan was underfunded on a solvency basis as at that date in that the total value of its assets was not sufficient to pay the total actuarial value of benefits to that date. Furthermore, the February 28, 2001 cost certificate filed by the Administrator confirms that there have not been any events that would lead to the elimination of the deficit reported by the March 31, 1999 actuarial valuation.
2. PricewaterhouseCoopers Inc. was appointed Interim Receiver and Manager of Royal Oak Mines Inc. on April 16, 1999.
3. The Interim Receiver and Manager of Royal Oak Mines Inc. has advised the Administrator that there are no assets available from the estate of Royal Oak Mines Inc. for the Pension Plan.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act*, if within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, Ontario
M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.

DATED at North York, Ontario, this 20th day of June, 2001.
Dina Palozzi
Chief Executive Officer and
Superintendent of Financial Services

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IN THE MATTER OF the *Pension Benefits Act,* R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the *"Act"*);

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the *Act* consenting to a payment out of the **Pension Plan for Locally Engaged Employees of the New Zealand Government in Canada, Registration Number 338970**;

TO: **Her Majesty The Queen in Right of New Zealand**
New Zealand High Commission
Suite 727, 99 Bank Street
Ottawa, Ontario
K1P 6G3

Attention: Wade Armstrong
High Commissioner
Applicant and Employer

Notice of Proposal

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the *Act,* consenting to the payment, out of the Pension Plan for Locally Engaged Employees of the New Zealand Government in Canada, Registration No. 338970 (the "Plan"), to Her Majesty the Queen in Right of New Zealand in the amount of $544,701 as at May 1, 2000, adjusted for investment earnings thereon to the date of payment and adjusted for legal, actuarial and administrative expenses.

I PROPOSE TO MAKE THE ORDER effective only after the Applicant satisfies me that all benefits and other payments (including those pursuant to the Surplus Distribution Agreement defined in paragraph 5 below) to which the members, former members and any other persons so entitled to such payments have been paid, purchased or otherwise provided for.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. Her Majesty the Queen in Right of New Zealand is the employer as defined in the Plan (the "Employer").
2. The Plan was wound up, effective May 1, 2000.
3. As at May 1, 2000, the surplus in the Plan was estimated at $864,606.
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
5. The application discloses that by written agreement made by the Employer, and 100% of the members and 100% of the former members and other persons entitled to payments, the surplus in the Plan at the date of payment, after deduction of wind up expenses, is to be distributed:
   a) 63.00015% to the Employer; and
   b) 36.99985% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.
6. The Employer has applied, pursuant to section 78 of the *Act,* and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 63.00015% of the surplus in the Plan (after adding investment earnings and deducting of the expenses related to the wind up of the Plan.)
7. The application appears to comply with section 78 and subsection 79(3)(a) and (b) of the *Act* and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.
8. Such further and other reasons as come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act*, if within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, Ontario
M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at North York, Ontario, this 26th day of June, 2001.
Dina Palozzi
Chief Executive Officer and
Superintendent of Financial Services

cc: Dany Mathieu, Hicks Morley Hamilton Stewart Storie LLP

Rosemary Patterson, New Zealand High Commission

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IN THE MATTER OF the *Pension Benefits Act,* R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997,* S.O. 1997, c. 28 (the *"Act"*);

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(4) of the *Act* consenting to a payment out of the **Retirement Benefit Pension Plan for Members of Local 1804-I.A.M. of the Weatherhead Plant of Dana Canada Inc., Registration Number 0311845**;

TO: **Dana Canada Inc.**
P.O. Box 3029
St. Catharines, Ontario
L2R 7K9

Attention: William A. Jocsak
Director, Benefits Administration
Applicant and Employer

Notice of Proposal

I PROPOSE TO MAKE AN ORDER under s. 78(4) of the *Act,* consenting to the payment out of The Retirement Benefit Pension Plan for Members of Local 1804-I.A.M. of the Weatherhead Plant of Dana Canada Inc., Registration No. 0311845 (the "Plan"), to Dana Canada Inc. in the amount of $13,193.78.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. Dana Canada is the employer as defined in the Plan (the "Employer").
2. The Employer made contributions to the fund of $13,193.78 in the month of January 2001, from its general revenue instead of from the Plan's surplus assets.
3. The Plan is in a surplus position. The most recent Actuarial Valuation Report, which includes the period under question, stipulates that payments should be made from the Plan's surplus assets.
4. The Plan provides that the Company may apply any excess assets of the pension fund towards the Company's obligations to contribute into the Plan.
5. The pension fund carrier has attested that the contributions were made from the Employer's general assets and should have been made from the Plan's surplus assets.
6. The Employer has applied, pursuant to subsection 78(4) of the *Act,* for consent of the Superintendent of Financial Services to the payment of $13,193.78.
7. The application appears to comply with subsection 78(4) of the *Act.*
8. Such further and other reasons as come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act,* if within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, Ontario
M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at North York, Ontario, this 28th day of June, 2001.
Dina Palozzi
Chief Executive Officer and
Superintendent of Financial Services

cc: Waheda Alli, The Standard Life Assurance Company

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IN THE MATTER OF the *Pension Benefits Act,* R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997,* R.S.O. 1997, c. 28;

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make a Declaration under Section 83 of the *Pension Benefits Act,* as amended by the *Financial Services Commission of Ontario Act, 1997,* R.S.O. 1997, c. 28, respecting the **Retirement Benefit Plan for the Employees of Norman Wade Company Limited, Techniprint Services Limited and Norman Wade Management Limited, Registration Number 0315176** (the "Pension Plan");

TO: **Arthur Andersen Inc.**
Suite 1050
4 King Street West
Toronto, Ontario
M5H 1B6

Attention: Lawrence A. Contant
Administrator of the Pension Plan

AND TO: **Norman Wade Company Limited, Techniprint Services Limited and Norman Wade Management Limited**
75 Milner Avenue
Scarborough, Ontario
M1S 3R7

Attention: T. A. Ronaldson
Employer

Notice of Proposal to Make a Declaration

WHEREAS:

1. The Retirement Benefit Plan for the Employees of Norman Wade Company Limited, Techniprint Services Limited and Norman Wade Management Limited (the "Pension Plan"), Registration No. 0315176, is registered under the *Pension Benefits Act,* R.S.O. 1990, c. P.8 as amended by the *Financial Services Commission of Ontario Act, 1997,* c. 28, (the *"Act"*); and
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the *Act* or the regulations made thereunder; and
3. Pension Plan was wound up effective May 1, 1998; and
4. The Superintendent of Pensions appointed Arthur Andersen Inc. as the administrator (the "Administrator") of the Pension Plan on June 15, 1998;

I PROPOSE TO CONSIDER TO MAKE A DECLARATION, pursuant to section 83 of the *Act,* that the Guarantee Fund applies to the Pension Plan **FOR THE FOLLOWING REASONS**:

1. The Wind Up Report filed by the Administrator indicates an estimated funding deficiency of $199,252 as at April 1, 2000, with respect to Ontario members, before deduction of wind up costs.
2. On May 1, 1998, Norman Wade Company Limited was assigned into bankruptcy, and the affiliates it operated, namely Techniprint Services Limited and Norman Wade Management Limited, ceased operations on the same day.
3. The trustee in bankruptcy of Norman Wade Company Limited has advised the Administrator that there are no funds available from the estate of the Company to pay to the Pension Plan.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act*, if within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, Ontario
M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at North York, Ontario, this 6th day of July, 2001.
Dina Palozzi
Chief Executive Officer and
Superintendent of Financial Services

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IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28;

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28, respecting the **Hudson Bay Diecasting Limited Salaried Employees Retirement Income Plan, Registration Number 0380170**;

TO: **Arthur Andersen Inc.**
Suite 1050
4 King Street West
Toronto, Ontario
M5H 1B6

Attention: Mr. David R. Kearney
Administrator

AND TO: **Hudson Bay Diecasting Limited**
230 Orenda Road
Brampton, Ontario
L6T 1E9

Attention: Mr. Dwight W. Rollins
Employer

AND TO: **PricewaterhouseCoopers Inc.**
Suite 1100
One Robert Speck Parkway
Mississauga, Ontario
L4Z 3M3

Attention: Mr. Andrew Wilczynski
Trustee in Bankruptcy for Hudson Bay Diecasting Limited

Notice of Proposal to Make a Declaration

WHEREAS:

1. The Hudson Bay Diecasting Limited Salaried Employees Retirement Income Plan, Registration No. 380170 (the "Plan"), is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the *"Act"*); and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the *Act* or the regulations made thereunder; and
3. The Superintendent of Pensions appointed Arthur Andersen Inc. as the administrator (the "Administrator") of the Plan on January 17, 1996; and
4. The Superintendent of Pensions issued an Order that the Plan be wound up effective September 7, 1995; and
5. The Administrator filed a wind up report for approval by the Superintendent of Financial Services; and
6. The Superintendent of Financial Services approved, on July 11, 2001, the distribution of the assets of the Plan as proposed under the wind up report, subject to any additional funding that may be required from the Guarantee Fund;

I PROPOSE TO CONSIDER TO MAKE A DECLARATION, pursuant to section 83 of the *Act*, that the Guarantee Fund applies to the Plan **FOR THE FOLLOWING REASONS**:

1. The funded ratio of the Plan has been estimated to be 67.7% with an estimated claim against the Guarantee Fund at wind up of $118,028.00.

2. The employer, Hudson Bay Diecasting Limited, was assigned into bankruptcy on September 7, 1995.
3. The trustee in bankruptcy for Hudson Bay Diecasting Limited has advised the Administrator that there are no funds available from the estate of Hudson Bay Diecasting Limited to make payment to the Plan.
4. The Administrator advised that it is of the opinion that there are reasonable and probable grounds for concluding that the funding requirements of the *Act* and regulation cannot be satisfied.

YOU ARE ENTITLED TO A HEARING before the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act*, if within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, Ontario
M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at North York, Ontario, this 23rd day of July, 2001.

K. David Gordon
Deputy Superintendent, Pension Division
by delegated authority from
Superintendent of Financial Services

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IN THE MATTER OF the *Pension Benefits Act,* R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997,* S.O. 1997, c. 28;

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make a Declaration under Section 83 of the *Pension Benefits Act,* as amended by the *Financial Services Commission of Ontario Act, 1997,* S.O. 1997, c. 28, respecting the **Hudson Bay Diecasting Limited Hourly Employees Retirement Income Plan, Registration Number 362178**;

TO: **Arthur Andersen Inc.**
Suite 1050
4 King Street West
Toronto, Ontario
M5H 1B6

Attention: Mr. David R. Kearney
Administrator

AND TO: **Hudson Bay Diecasting Limited**
230 Orenda Road
Brampton, Ontario
L6T 1E9

Attention: Mr. Dwight W. Rollins
Employer

AND TO: **PricewaterhouseCoopers Inc.**
Suite 1100
One Robert Speck Parkway
Mississauga, Ontario
L4Z 3M3

Attention: Mr. Andrew Wilczynski
Trustee in Bankruptcy for Hudson Bay Diecasting Limited

AND TO: **National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW - Canada), Local 1285**
205 Placer Court
Toronto, Ontario
M2H 3H9

Attention: Jeff Wareham, National Representative, Pension and Benefits Department
Union

Notice of Proposal to Make a Declaration

WHEREAS:

1. The Hudson Bay Diecasting Limited Hourly Employees Retirement Income Plan, Registration No. 362178 (the "Plan"), is registered under the *Pension Benefits Act,* R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997,* S.O. 1997, c. 28 (the *"Act"*); and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the *Act* or the regulations made thereunder; and
3. The Superintendent of Pensions appointed Arthur Andersen Inc. as the administrator (the "Administrator") of the Plan on January 17, 1996.
4. The Superintendent of Pensions issued an Order that the Plan be wound up effective September 7, 1995; and
5. The Administrator filed a wind up report for approval by the Superintendent of Financial Services; and
6. The Superintendent of Financial Services

approved, on July 11, 2001, the distribution of the assets of the Plan as proposed under the wind up report, subject to any additional funding that may be required from the Guarantee Fund;

I PROPOSE TO CONSIDER TO MAKE A DECLARATION, pursuant to section 83 of the *Act*, that the Guarantee Fund applies to the Plan **FOR THE FOLLOWING REASONS**:

1. The funded ratio of the Plan at wind up is estimated to be 78.9%, with an estimated claim against the Guarantee Fund at wind up of $472,444.00.
2. The employer, Hudson Bay Diecasting Limited, was assigned into bankruptcy on September 7, 1995.
3. The trustee in bankruptcy for Hudson Bay Diecasting Limited has advised the Administrator that there are no funds available from the estate of Hudson Bay Diecasting Limited to make payment to the Plan.
4. The Administrator is of the opinion that there are reasonable and probable grounds for concluding that the funding requirements of the *Act* and regulation cannot be satisfied.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act*, if within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, Ontario
M2N 6L9

Attention: The Registrar

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DATED at North York, Ontario, this 23rd day of July, 2001.

K. David Gordon
Deputy Superintendent, Pension Division
by delegated authority from
Superintendent of Financial Services

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IN THE MATTER OF the *Pension Benefits Act,* R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, R.S.O. 1997, c. 28;

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make a Declaration under Section 83 of the *Pension Benefits Act,* as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28, respecting the **Pension Plan for Hourly Employees of Alumiprime Windows Limited, Registration Number 1021005** (the "Pension Plan");

TO: **Arthur Andersen Inc.**
Suite 1050
4 King Street West
Toronto, Ontario
M5H 1B6

Attention: Mr. Lawrence Contant
Administrator of the Pension Plan for Hourly Employees of Alumiprime Windows Limited

AND TO: **Alumiprime Windows Limited**
40 St. Regis Crescent North
Downsview, Ontario
M3J 1Z2

Attention: Martin Cash
Employer

AND TO: **Shiner & Associates Inc.**
30 Wertheim Court
Suite 22
Richmond Hill, Ontario
L4B 1B9

Attention: Debbie Geller
Trustee in Bankruptcy, Alumiprime Windows Limited

AND TO: **United Steelworkers of America**
25 Cecil Street
Toronto, Ontario
M5T 1N1

Attention: Mohamed Baksh
Union

Notice of Proposal to Make a Declaration

WHEREAS:

1. The Pension Plan for Hourly Employees of Alumiprime Windows Limited, Registration No. 1021005 (the "Pension Plan"), is registered under the *Pension Benefits Act,* R.S.O. 1990, c. P.8 as amended by the *Financial Services Commission of Ontario Act, 1997*, c. 28, (the *"Act"*); and
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the *Act* or the regulations made thereunder; and
3. The Pension Plan was wound up effective November 24, 1998; and
4. The Superintendent of Pensions appointed Arthur Andersen Inc. as the administrator (the "Administrator") of the Pension Plan on July 9, 1999.

I PROPOSE TO CONSIDER TO MAKE A DECLARATION, pursuant to section 83 of the *Act,* that the Guarantee Fund applies to the Pension Plan **FOR THE FOLLOWING REASONS**:

1. The Extracts of the Actuarial Valuation Report filed by the Administrator indicate an estimated funding deficiency of $177,100.00 as at November 24, 1998.

2. Shiner & Associates Inc. was appointed Trustee in Bankruptcy of Alumiprime Windows Limited on November 24, 1998.
3. The trustee in bankruptcy of Alumiprime Windows Limited has advised the Administrator that there are no funds available from the estate of Alumiprime Windows Limited for the Pension Plan.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act*, if within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, Ontario
M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.

DATED at North York, Ontario, this 26th day of July, 2001.

K. David Gordon
Deputy Superintendent, Pension Division
by delegated authority from
Superintendent of Financial Services

NOTE – PURSUANT to section 112 of the *Act* any notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the *"Act"*);

AND IN THE MATTER OF an application pursuant to s. 78(1) of the *Act* submitted by Stanley Canada Inc. in respect of the **Pension Plan for Designated Employees of Stanley Canada Inc., Registration Number 456897**;

TO: **William M. Mercer Limited**
161 Bay Street
P.O. Box 501
Toronto, Ontario
M5J 2S5

Attention: Ms. Melissa Merker
Agent for Applicant, Employer and Administrator of the Plan

Notice of Proposal to Refuse to Consent To Application

I PROPOSE TO REFUSE TO CONSENT to the Application for payment of surplus to the Employer dated April 1999, pursuant to s. 78(1) of the *Act*.

I PROPOSE TO REFUSE TO CONSENT TO THE APPLICATION FOR THE FOLLOWING REASONS:

1. In 1964, the corporate predecessor to the Employer established a defined contribution pension plan that required employer and employee contributions, named the Pension Plan, for Employees of Acmetrack Limited and a deferred profit sharing plan that only allowed employer contributions, named the Deferred Profit Sharing Plan, for Employees of Acmetrack Limited ("the Prior Plans"). Both employer and employee contributions were, under the provisions of the Prior Plans, paid into a trust fund. The trust agreement relating to the trust fund did not reserve any power on behalf of the Employer or its predecessors to revoke the trust. In addition, the texts of the Prior Plans provided that the contributions to the Prior Plans were irrevocable and were to be used for the exclusive benefit of the members of the Prior Plans. Hence the contributions in the Prior Plans from the inception of the Prior Plan were subject to an irrevocable trust (express or implied) for the benefit of the members.
2. Effective January 1, 1982, the Pension Plan for Designated Employees of Stanley Canada Inc. ("the Plan"), that is the subject of this Notice of Proposal, was established. At all material times, the Plan was a non-contributory defined benefits pension plan. As a condition of becoming a member of the Plan, each member who joined the Plan was required to terminate his/her membership in the Prior Plans. The Plan provided that from the date on which the employee became a member of the Plan his/her entitlements under the Prior Plans would be transferred to and governed under the terms of the Plan. The three members of the Plan who were entitled to benefits under the Plan on the date of the wind up of the Plan, December 31, 1993, were members of the Prior Plans.
3. While the employee contributions made to the Pension Plan for Employees of Acmetrack Limited have remained segregated from the fund for the Plan, the employer contributions to the Prior Plans have been commingled with the monies in the fund for the Plan. However, these contributions have remained impressed with a trust in favour of these members.

4. The provisions of the Plan by which the Employer reserved to itself the power to amend and terminate the trust associated with the Plan and by which the Employer was given power to direct the distribution of the assets and which provide in effect that the Employer is entitled to the surplus on the wind up of the Plan, do not permit the Employer to revoke the trust associated with the employer contributions in the Prior Plans because they are the subject to an irrevocable trust set up in respect of the contributions to the prior Plans which trust was never legally and properly terminated in accordance with the requirements of the trust.
5. The trust agreement relating to the Prior Plans prevails over any inconsistent provisions in the text of the Plan which purport to give the Employer a right to all of the surplus that might exist on wind up of the Plan.
6. The Employer has not demonstrated that the Plan provides for the payment of surplus to the Employer on the wind up of the Plan.
7. Therefore the Employer has not demonstrated that it has complied with s. 79(3)(b) of the *Act*, which requires that the Plan provide for payment of surplus to the Employer on the wind up of the Plan.
8. Section 78(2) of the *Act* requires that an employer who applies to the Superintendent for consent to payment of surplus to the employer, must transmit notice of the application containing the prescribed information to, *inter alia*, each member and each former member of the plan and to any other individual who is receiving payments out of the pension fund. Section 28(5)(f) of Regulation 909, R.R.O. 1990, as amended ("the Regulation"), requires that notice under section 78(2) of the *Act* include "the contractual authority for surplus reversion." The Financial Services Commission of Ontario ("FSCO") policy S900-508 entitled "Application by an Employer for Payment of Surplus from a Wound-Up Plan" and applying to applications filed between July 1, 1998 and December 31, 2000, states that section 28(5)(f) of the Regulation requires a "full and complete disclosure of all provisions of the plan and trust documentation from inception that may be relevant in determining entitlement to the payment of surplus on wind up, including provisions in all current and prior plan texts, trust agreements... and other documents that may be relevant."
9. The notice of application provided by the Employer to the members, former members and other persons entitled to benefits under the Plan does not contain any reference to the provisions of the Prior Plans.
10. Therefore, the Employer has not demonstrated that it has complied with section 78(2) of the *Act*.
11. The consents filed from the members of the Plan who were members on the date of wind up are, therefore, invalid owing to the fact that the information provided in the Employer's notice of application did not meet the requirements of the Regulation.
12. Therefore the Employer has not demonstrated that it has complied with s. 8(1)(b)(ii) of the Regulation, which requires the agreement of at least two-thirds of the members of the Plan, if there is no collective bargaining agent representing the members, to the payment of surplus to the members.

13. Such further and other reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act*, if within thirty (30) days after the Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, Ontario
M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at North York, Ontario, this 26th day of July, 2001.

K. David Gordon
Deputy Superintendent, Pension Division
by delegated authority from
Superintendent of Financial Services

[1]NOTE – PURSUANT to section 112 of the *Act* any notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended;

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services, under s. 89(5)of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the *"Act"*), to Refuse to Make an Order pursuant to section 69 of the *Act*, respecting the **Philip Services Inc. Pension Plan for Intermetco Senior Management Employees, Registration Number 0687608** (the "Plan");

TO: **Doris M. Mair**
27 Concession 5 East
Waterdown, Ontario
L0R 2H1
Former Member

AND TO: **Philip Services Inc.**
100 King Street West
P.O. Box 2440, LCD 1
Hamilton, Ontario
L8N 4J6

Attention: James O'Leary
Senior Vice President, Human Resources

Notice of Proposal to Refuse to Make an Order

I PROPOSE TO REFUSE TO MAKE AN ORDER, pursuant to s. 89(5), that the Philip Services Inc. Pension Plan for Intermetco Senior Management Employees, Registration No. 0687608, be wound up in part pursuant to s. 69(1) of the *Act*.

I PROPOSE TO REFUSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. The predecessor to the Plan was established for certain senior management employees of Intermetco Limited ("Intermetco"). In 1997, Philip Services Corp. acquired Intermetco. Subsequently, Philip Services Corp. was purchased by Philip Services Inc. Prior to the acquisition by Philip Services Corp., Intermetco had commenced a reorganization within the meaning of that term in subsection 69 (1)(d) of the *Act*. The reorganization continued after the Philip Services Corp.'s acquisition of Intermetco.
2. As of December 31, 1997, there were five active members in the Plan. One member, Ms. Doris Mair, was terminated as a result of the reorganization undertaken prior to the sale. Ms. Mair was provided notice of her termination on or about March 6, 1997. At that time, she was advised that her salary and her pensionable service accrual would continue until August 31, 1999.
3. Three other members of the Plan ceased employment during the period of the reorganization, however, their employment was not terminated as a result of the reorganization. These other members of the Plan ceased employment as a result of attaining the normal or early retirement age under the Plan, voluntarily leaving employment and/or the expiration of the applicable employment contract.
4. Subsection 69 (1)(d) of the *Act* states that the Superintendent may require the wind up of a pension plan in whole or in part, if "a significant number of the members of the pension plan cease to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer." Only one member of the Plan ceased employment as a result of the reorganization. Therefore, a significant number of employees have not ceased employment as a result of the

reorganization of the business of the Employer.

5. Therefore, it has not been demonstrated that the criteria in subsection 69(1)(d) of the *Act* have been met, and there is no basis under that provision for the Superintendent to order a partial wind up of the Plan.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act*, if within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, Ontario
M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at North York, Ontario, this 26th day of July, 2001.

K. David Gordon
Deputy Superintendent, Pension Division
by delegated authority from
Superintendent of Financial Services

cc: **Stikeman Elliott**
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Ontario
M5L 1B9

Attention: Gary Nachshen
Solicitors for the
Administrator and Employer

John Lychy
1819 Barsuda Drive
Mississauga, Ontario
L5J 1V3

Tom Parker
82 Lakeshore Road
St. Catharines, Ontario
L2N 2T4

Edmund Fraser
2455 Butternut Cres.
Burlington, Ontario
L7M 3L8

Former Members

[1]NOTE – PURSUANT to section 112 of the *Act* any notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "*Act*");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the *Act* consenting to a payment out of **The Pension Plan for Non-Unionized Salaried Employees of Libbey Canada Inc., Registration Number 1001130**;

TO: **Mr. Frederick J. Thompson, F.S.A., F.C.I.A.**
Thompson Actuarial Limited
87 Wolverleigh Blvd.
Toronto, Ontario
M4J 1R8
Actuary for the Applicant and Employer

Notice of Proposal

I PROPOSE TO MAKE AN ORDER, under s. 78(1) of the *Act*, consenting to the payment out of the The Pension Plan for Non-Unionized Salaried Employees of Libbey Canada Inc., Registration No. 1001130, to Libbey Canada Inc., in the amount of approximately $358,429 as at December 31, 2000, plus investment earnings thereon to the date of payment.

I PROPOSE TO MAKE THE ORDER effective only after the Applicant satisfies me that the administrator of the pension plan has paid out all benefits and other payments, including any enhancements arising from the surplus sharing agreement, to which members, former members and any other persons are entitled on the partial termination of the pension plan effective May 31, 1999.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. Libbey Canada Inc. is the employer as defined in the Plan.
2. The Plan was partially wound up, effective May 31, 1999.
3. As at May 31, 1999, the surplus in the Plan attributable to the members affected by the partial wind up and former members was estimated at $380,890, which has grown to $543,075, as at December 31, 2000.
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
5. The Application discloses that by written agreement made by the Employer, and 83% of the members affected by the partial wind up, and 69% of the former members and other persons entitled to payments, the surplus in the Plan at the date of payment, after deduction of wind up expenses, is to be distributed:
   a) 66% to the Employer; and
   b) 34% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.
6. The Employer has applied, pursuant to section 78 of the *Act*, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 66% of the surplus in the Plan (after adding 66% of investment earnings and deducting 66% of the expenses related to the partial wind up of the Plan).
7. The application appears to comply with section 78 and subsection 79(3) of the *Act* and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.
8. Such further and other reasons as come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act*, if within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, Ontario
M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at North York, Ontario, this 31st day of July, 2001.

K. David Gordon
Deputy Superintendent, Pension Division
by delegated authority from
Superintendent of Financial Services

cc: Nazim Virani, Libbey Canada Inc.

NOTE – PURSUANT to section 112 of the *Act* any notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8 (the *"Act"*), as amended;

AND IN THE MATTER OF an Amendment effective January 1, 2000, to the **Pension Plan for Employees of Engel Canada Inc., Registration Number 446393** (the "Plan");

TO: **Engel Canada Inc.**
545 Elmira Road
Guelph, Ontario
N1K 1C2

Attention: Mr. Bill Rowe
Human Resources Manager
Administrator and Employer

Notice of Proposal to Refuse to Register an Amendment

I PROPOSE TO REFUSE TO REGISTER AN AMENDMENT, effective January 1, 2000, to the Pension Plan for Employees of Engel Canada Inc., Registration No. 446393 (the "Plan").

I PROPOSE TO REFUSE TO MAKE THIS REFUSAL FOR THE FOLLOWING REASONS:

1. The Plan is a defined contribution pension plan. On or about September 29, 1999, the Board of Directors for the Employer passed a resolution approving Amendment Number 4 to the Plan (the "Amendment") effective January 1, 2000. The Amendment modifies the Plan to eliminate required employee contributions and institutes employer contributions calculated on the basis of the amount of employee contributions to a separate Group Registered Retirement Savings Plan. In addition, the Amendment purports to reclassify all required member contributions made prior to January 1, 2000, as voluntary contributions.
2. Subsection 18(1)(d) of the *Act* permits the Superintendent to refuse to register an amendment "if the amendment is void or if the pension plan with the amendment would cease to comply with this *Act* and the regulations."
3. Subsection 63(1) of the *Act* states that no member or former member is entitled to a refund of contributions from a pension plan. However, subsection 63(2) specifically permits the refund of additional voluntary contributions. Notwithstanding subsection 63(1), subsection 63(7) states that contributions may be refunded with the consent of the Superintendent. Subsection 63(8) states that such consent may be provided if the pension plan provides for the refund "and the employer has assumed responsibility for funding all pension benefits associated with the contributions."
4. The Financial Services Commission of Ontario ("FSCO") policy R400 - 101, entitled "Application for Refund to Plan Members or Former Members," states that where a plan has been amended to deem required contributions to be additional voluntary contributions, the requirements of subsection 63(8) will apply.
5. Required contributions that are subsequently deemed to be additional voluntary contributions through an amendment to the plan, are not additional voluntary contributions within the meaning of the *Act*. Section 1 defines additional voluntary contributions as contribution to the pension plan beyond any amount that the member is required to contribute and does not include a contribution in relation to which the employer is required to make a concurrent additional contribution to the

pension fund. The contributions that are the subject of the Amendment were required contributions under section 4 of the Plan at the time that they were made. In addition, the employer's contribution, under section 4 of the Plan, was calculated as a prescribed percentage of the employee's contribution and therefore is a contribution in relation to which the employer was required to make a concurrent additional contribution. As such, subsection 63(2) of the *Act* does not apply to the Amendment and the provisions of subsection 63(8) are applicable.

6. The Employer takes the position that it will not assume responsibility for funding all pension benefits associated with the deemed additional voluntary contributions. The Amendment, therefore, does not comply with subsection 63(8) of the *Act*. I therefore propose to refuse to register the Amendment under subsection 18(1)(d) of the *Act* because the Plan with the Amendment would cease to comply with the *Act*, specifically section 63 of the *Act*.
7. Such further and other reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act*, if within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, Ontario
M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at North York, Ontario, this 3rd day of August, 2001.

K. David Gordon
Deputy Superintendent, Pension Division
by delegated authority from
Superintendent of Financial Services

cc: **Ian Bedford, Wayne Cavasin, Joe Kuzel, John Ness and Bill Rowe**
545 Elmira Road
Guelph, Ontario
N1K 1C2
Engel Canada Pension Committee Members

Robertson Eadie & Associates
407 Speers Road, Suite 211
Oakville, Ontario
L6K 3T5
Attention: Mr. Stephen Eadie
Actuary for the Administrator and Employer

[1]NOTE – PURSUANT to section 112 of the *Act* any notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended;

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 69 of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended, respecting the **Revised Pension Plan for Hourly Rated Employees of Marsh Engineering Ltd., Registration Number 384313**;

TO: **Arthur Andersen Inc.**
Suite 1050
4 King Street West
Toronto, Ontario
M5H 1B6

Attention: Lawrence A. Contant
Manager
Administrator

AND TO: **Marsh Engineering Ltd.**
118 West Street
Port Colborne, Ontario
L3K 4C9

Attention: Charlotte Watson
Payroll Administrator
Employer

AND TO: **Marsh Instrumentation Inc.**
1016-C Sutton Drive
Burlington, Ontario
LTL 6B8
Employer

Notice of Proposal to Make an Order

I PROPOSE TO ORDER that the Revised Pension Plan for Hourly Rated Employees of Marsh Engineering Ltd., Registration No. 384313 (the "Plan"), be wound up in whole effective March 16, 2000.

I PROPOSE TO MAKE THIS ORDER pursuant to subsection 69(1) of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the *"Act"*).

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. There was a cessation or suspension of employer contributions to the pension fund, within the meaning of clause 69(1)(a) of the *Act*.
2. The employer failed to make contributions to the pension fund as required by the *Act* or the regulations within the meaning of clause 69(1)(b) of the *Act*.
3. A significant number of members of the pension plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer, within the meaning of clause 69(1)(d) of the *Act*.
4. All or a significant portion of the business carried on by the employer at a specific location was discontinued, within the meaning of clause 69(1)(e) of the *Act*.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act*, if within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, Ontario
M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

THE ADMINISTRATOR IS REQUIRED, pursuant to subsection 89(5) of the *Act*, to transmit a copy of this Notice of Proposal to Make an Order to the following persons:

United Steelworkers of America
1031 Barton Street East
Hamilton, Ontario
L8L 3E3

Attention: Dave MacIntosh
Local President
The Union

Deloitte & Touche Inc.
181 Bay Street
Suite 1400, BCE Place
Toronto, Ontario
M5J 2V1

Attention: Robert Paul
Partner
Trustee in Bankruptcy for Marsh Engineering Ltd. and Marsh Instrumentation Inc.

DATED at North York, Ontario, this 3rd day of August, 2001.

K. David Gordon
Deputy Superintendent, Pension Division
by delegated authority from
Superintendent of Financial Services

[1]NOTE – PURSUANT to section 112 of the *Act* any notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, S.O. 1997, c. 28 (the "*Act*");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order Requiring the Wind Up in Part of the **Imperial Oil Limited Retirement Plan, Registration Number 347054**;

TO: **Imperial Oil Limited**
111 St. Clair Avenue West
Toronto, Ontario
M5W 1K3

Attention: J.B. MacIntyre,
Senior Benefits Advisor
John F. Kyle, Vice President and Treasurer
Morris G. Dunko,
Senior Counsel, Law Department
Employer and Administrator of the Imperial Oil Limited Retirement Plan

Notice of Proposal to Make an Order

I PROPOSE TO ORDER that the Imperial Oil Limited Retirement Plan, Registration No. 347054 (the "Plan"), be wound up in part in relation to those members and former members of the Plan who were employed by General Electric Capital Canada Inc. ("GE Capital"), at its Markham, Ontario facility and who ceased employment with GE Capital between March 2000 and July 2000, as a result of the closure of the Markham facility.

I PROPOSE TO MAKE THIS ORDER, pursuant to subsection 69(1) of the *Pension Benefits Act*, R.S,O. 1990, c. P.8 as amended (the "*Act*").

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. Imperial Oil Limited ("IOL") is the employer and the administrator of the Plan.
2. IOL sold its credit card operations to GE Capital effective April 28, 1995. In conjunction with the sale, thirty-seven (37) former IOL employees became employees of GE Capital and became members of GE Capital's pension plan.
3. The pension benefits accrued by the transferred employees prior to the date of the sale remained in the Plan.
4 GE Capital closed its Markham, Ontario credit card facility effective May 5, 2000. In connection with this closure, it terminated thirty-two (32) of the thirty-seven (37) transferred employees, and filed a partial wind up report with the Pension Plans Branch of the Financial Services Commission.
5 Under paragraph 69(1)(d) of the *Act*, the Superintendent of Financial Services (the "Superintendent") may require the wind up of a pension plan, in whole or in part, if a significant number of the members of the pension plan cease to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer.
6. Under paragraph 69(1)(e) of the *Act*, the Superintendent may require the wind up of a pension plan where all or a significant portion of the business carried on by an employer at a specific location is discontinued.
7. For the purposes of the *Act*, the word "employer," as it is used in subsection 69,

in respect of an employee with benefits in more than one plan, refers to both the predecessor and successor employer, as held by the Pension Commission of Ontario in *Gencorp Canada Inc.* and affirmed by the Divisional Court and the Court of Appeal.[1]

8. Paragraph 80(1)(a) of the *Act* provides that when an employer who contributes to a pension plan sells, assigns or otherwise disposes of all or part of the assets of its business, a member of the pension plan who in conjunction with the sale, assignment or disposition becomes an employee of the successor employer and a member of the successor employer's pension plan, continues to be entitled, without further accrual, to the benefits provided under the predecessor employer's pension plan, to the effective date of the sale, assignment or disposition.
9. Subsection 80(3) of the *Act* provides that where a transaction, as described in subsection 80(1) above, takes place the employment of the employee shall be deemed, for the purposes of the *Act,* not to be terminated by reason of the transaction.
10. As held in *Gencorp*, subsection 80(3) deems the non-termination for the purpose of ensuring continuity of membership for the transferred employees and to prevent them from losing their previous years of service in the calculation of future benefits.
11. The effect of subsection 80(3), for the transferred employees, is that IOL continues to be their employer for the purpose of the Plan.
12. Accordingly, IOL is an employer who may be ordered to partially wind up a pension plan under section 69 of the *Act,* due to the discontinuance of the business by GE Capital at the Markham facility of GE Capital.
13. A significant number of the members of the plan at the Markham facility ceased to be employed as a result of the discontinuance or reorganization of the business of GE Capital at its Markham facility, within the meaning of paragraph 69(1)(d) of the *Act.*
14. All or a significant portion of the business carried on by GE Capital at its Markham facility was discontinued, within the meaning of paragraph 69(1)(e) of the *Act.*
15. Such further and other reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to s. 89(6) of the *Act,* if within thirty (30) days after the Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[2]

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, Ontario
M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I WILL MAKE THE ORDER PROPOSED HEREIN.

[1] *Consolidated Gencorp Canada,* P.C.O. Decision Aug. 31, 1994, confirmed Divisional Court, [1995 O.J. No. 3768], Dec. 7, 1995, confirmed Ontario Ct. of Appeal [1998 O.J. No. 961] March 11, 1998.

THE ADMINISTRATOR IS REQUIRED, pursuant to subsection 89(5) of the *Act*, to transmit a copy of this Notice of Proposal to members and former members of the Plan who were employed by General Electric Capital Canada Inc. ("GE Capital") at its Markham, Ontario facility, and who ceased employment with GE Capital between March 2000 and July 2000, as a result of the closure of the Markham facility.

DATED at North York, Ontario, this 3rd day of August, 2001.

K. David Gordon
Deputy Superintendent, Pension Division
by delegated authority from
Superintendent of Financial Services

[2]NOTE – PURSUANT to section 112 of the *Act* any notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act*, S.O. 1997, c. 28 (the "*Act*");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order with respect to the Calculation of Pension Benefits, pursuant to section 87 of the *Act*, relating to the **Imperial Oil Limited Retirement Plan, Registration Number 347054**;

TO: **Imperial Oil Limited**
111 St. Clair Avenue West
Toronto, Ontario
M5W 1K3

Attention: J.B. MacIntyre,
Senior Benefits Advisor
John F. Kyle,
Vice President and Treasurer
Morris G. Dunko,
Senior Counsel, Law Department
Employer and Administrator of the Imperial Oil Limited Retirement Plan

Notice of Proposal to Make an Order

I PROPOSE TO ORDER that the administrator of the Imperial Oil Limited Retirement Plan, Registration No. 347054 (the "Plan"), give credit for both age and years of service at the time they ceased employment with GE Capital to those members and former members of the Plan who were employed by General Electric Capital Canada Inc. ("GE Capital"), at its Markham, Ontario facility and who ceased employment with GE Capital between March 2000 and July 2000, as a result of the closure of the Markham facility, when determining entitlement to benefits under the Plan, pursuant to article 80(1)(c) of the *Act*.

I PROPOSE TO MAKE THIS ORDER pursuant to subsection 87(1) of the *Act*.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. Imperial Oil Limited ("IOL") is the employer and the administrator of the Plan.
2. IOL sold its credit card operations to GE Capital effective April 28, 1995. In conjunction with the sale, thirty-seven (37) former IOL employees who were members of the Plan became employees of GE Capital and became members of GE Capital's pension plan.
3. The pension benefits accrued in the Plan by the transferred employees, prior to the date of the sale, remained in the Plan.
4. GE Capital closed its Markham, Ontario credit card facility effective May 5, 2000. In connection with this closure, it terminated thirty-two (32) of the thirty-seven (37) transferred employees ("the affected employees") and filed a partial wind up report with the Pension Plans Branch of the Financial Services Commission.
5. Upon their termination with GE Capital, the affected employees received from IOL a Statement of Entitlement and option form concerning their benefits and options under the Plan. In the Statement of Entitlement the termination date used for the determination of the affected employees' benefit options with respect to their age was the date of their transfer to GE Capital, not the date of their termination from GE Capital.
6. The Statement of Entitlement included the affected employees' years of service with GE Capital. In correspondence dated March 23, 2001, IOL's senior counsel indicated that

IOL took the view that under section 80 of the *Act*, years of service only are to be credited for the purpose of determining entitlement to benefits.

7. Subsection 80(3) of the *Act* provides that where a transaction, as described in subsection 80(1) above, takes place the employment of the employee shall be deemed, for the purposes of the *Act*, not to be terminated by reason of the transaction.
8. As held in *Gencorp*, and affirmed by the Divisional Court and the Court of Appeal,[1] subsection 80(3) deems the non-termination for the purpose of ensuring continuity of membership for the transferred employees and to prevent them from losing their previous years of service in the calculation of future benefits.
9. The effect of subsection 80(3), for the affected employees, is that IOL continues to be their employer for the purpose of the determining entitlement to the benefits of the Plan, up to the date of their termination with GE Capital. The affected employees are accordingly entitled to have their entitlement to benefits from the Plan determined as of their termination date with GE Capital.
10. Paragraph 80(1)(c) of the *Act* provides that when an employer who contributes to a pension plan sells, assigns or otherwise disposes of all or part of the assets of its business, a member of the pension plan who, in conjunction with the sale, assignment or disposition, becomes an employee of the successor employer and a member of the successor employer's pension plan, is entitled to credit in the (predecessor) employer's pension plan for the period of employment with the successor employer for the purpose of determining benefits in the (predecessor) employer's pension plan.
11. For the purposes of the *Act*, I consider that the term "credit in the employer's pension plan" as it is used in paragraph 80(1)(c), refers to both age and years of service accumulated while in the employ of the successor employer.
12. Accordingly, I consider that the affected employees are entitled to credit for both their age and years of service as of their termination date with GE Capital, in the determination of their entitlement to benefits under the Plan.
13. Such further and other reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to s. 89(6) of the *Act*, if within thirty (30) days after the Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[2]

[1] *Consolidated Genco., Canada*, P.C.O. Decision Aug. 31, 1994, confirmed Divisional Court, [1995 O.J. No. 3768], Dec. 7, 1995, confirmed Ontario Ct. of Appeal [1998 O.J. No. 961] March 11, 1998.

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, Ontario
M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I WILL MAKE THE ORDER PROPOSED HEREIN.

DATED at North York, Ontario, this 3rd day of August, 2001.

K. David Gordon
Deputy Superintendent, Pension Division
by delegated authority from
Superintendent of Financial Services

[2]NOTE – PURSUANT to section 112 of the *Act* any notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended;

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 69 of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended, respecting the **Revised Pension Plan for Salaried Employees of Marsh Engineering Ltd., Registration Number 276030**;

TO: **Arthur Andersen Inc.**
Suite 1050
4 King Street West
Toronto, Ontario
M5H 1B6

Attention: Lawrence A. Contant
Manager
Administrator

AND TO: **Marsh Engineering Ltd.**
118 West Street
Port Colborne, Ontario
L3K 4C9

Attention: Charlotte Watson
Payroll Administrator
Employer

AND TO: **Marsh Instrumentation Inc.**
1016-C Sutton Drive
Burlington, Ontario
LTL 6B8
Employer

Notice of Proposal to Make an Order

I PROPOSE TO ORDER that the Revised Pension Plan for Salaried Employees of Marsh Engineering Ltd., Registration No. 276030 (the "Plan"), be wound up in whole effective March 16, 2000.

I PROPOSE TO MAKE THIS ORDER pursuant to subsection 69(1) of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the *"Act"*).

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. There was a cessation or suspension of employer contributions to the pension fund, within the meaning of clause 69(1)(a) of the *Act*.
2. The employer failed to make contributions to the pension fund as required by the *Act* or the regulations within the meaning of clause 69(1)(b) of the *Act*.
3. A significant number of members of the pension plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer, within the meaning of clause 69(1)(d) of the *Act*.
4. All or a significant portion of the business carried on by the employer at a specific location was discontinued, within the meaning of clause 69(1)(e) of the *Act*.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act*, if within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, Ontario
M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

THE ADMINISTRATOR IS REQUIRED, pursuant to subsection 89(5) of the *Act*, to transmit a copy of this Notice of Proposal to Make an Order to the following persons:

Deloitte & Touche Inc.
181 Bay Street
Suite 1400, BCE Place
Toronto, Ontario
M5J 2V1

Attention: Robert Paul
Partner
Trustee in Bankruptcy for Marsh Engineering Ltd. and Marsh Instrumentation Inc.

DATED at North York, Ontario, this 3rd day of August, 2001.

K. David Gordon
Deputy Superintendent, Pension Division
by delegated authority from
Superintendent of Financial Services

[1]NOTE – PURSUANT to section 112 of the *Act* any notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the *"Act"*);

AND IN THE MATTER OF a Proposal by the Deputy Superintendent, Pension Division to make an Order under subsection 78(1) of the *Act* consenting to a payment out of the **Swift Adhesives Salaried Employees Pension Plan, Registration Number 956219**;

TO: **Reichhold Limited**
c/o Reichhold Inc.
P.O. Box 13582
Research Triangle Park
Raleigh Durham,
North Carolina
27709-3582
U.S.A.

Attention: Trent Rhyne
Compensation and Benefits Director
Applicant and Employer

Notice of Proposal

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the *Act*, consenting to the payment, in accordance with the Order of Mr. Justice Cumming of the Ontario Superior Court of Justice in the matter of Reichhold Limited and Michel B .yer and Gerard Boucher *et al*, dated February 2, 2000, including the Surplus Sharing Settlement Agreement attached thereto and made a part thereof (the "Court Order"), out of the Swift Adhesives Salaried Employees Pension Plan, Registration No. 956219 (the "Plan"), to Reichhold Limited, as follows:

(a) An amount shall be paid or allocated to the Applicant equal to:

(i) $541,305, the value of the liabilities as determined by the Plan Actuary in consultation with the actuary for the Plan members for early retirement benefits as negotiated and grow-in benefits required to be provided under the *Pension Benefits Act*, R.S.O. 1990, for Ontario members, which pursuant to the Surplus Sharing Settlement Agreement, shall be provided to all eligible employees of the Applicant accruing benefits under the Plan at any time in the period from November 13, 1998, through the Plan wind up date (April 30, 2000), regardless of jurisdiction of residence or employment and grow-in benefits as negotiated together with interest thereon from the date as at which each value is determined to the date of payment or allocation to the Applicant at the rates of interest used to determine the liability, as follows:

Interest Rate	**Value of Liabilities**
6.5% per annum	$355,344
5.0% per annum	$105,809
5.75% per annum	$ 80,152
Total	$541,305

plus

(ii) $2.1 million as at April 30, 2000, together with interest thereon at the rate of 6.5%, being the rate of return used to determine the Plan's liability for transfer values as determined by the Actuary from April 30, 2000, to the date of payment; plus

(iii) 50% of the surplus remaining after making provision for the payments contemplated in (i) and (ii) above together with net earnings or losses thereon (estimated to be, as at April 30, 2000, $3,278,154).

I PROPOSE TO MAKE THE ORDER effective only after the Applicant satisfies me that the entitlements of all members and former

members are being settled from the assets of the Plan in accordance with the Court Order.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. Reichhold Limited is the employer as defined in the Plan (the "Employer").
2. The Plan was wound up, effective April 30, 2000.
3. As at April 30, 2000, the surplus in the Plan was estimated at $9,197,614.
4. The court has ordered that the Plan provides for payment of surplus to the Employer on the wind up of the Plan in respect of subsection 79(3)(b) of the *Act*.
5. The application discloses that by written agreement made by the Employer, and 94.1% of the active members and other members (as defined in the application) and 79.2% of the former members and other persons entitled to payments, the surplus in the Plan at the date of payment, after deduction of wind up expenses is to be distributed:
   a) 64.4% to the Employer; and
   b) 35.6% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.
6. The Employer has applied, pursuant to section 78 of the *Act*, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of $541,305 as at April 30, 2000, plus $2.1 million together with interest at the rate of 6.5% from April 30, 2000, to the date of payment plus 50% of the surplus remaining after making provision for the aforementioned payments together with net earnings or losses.
7. The application appears to comply with section 78 and subsection 79(3) of the *Act* and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.
8. Such further and other reasons as come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act*, if within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, Ontario
M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at North York, Ontario, this 3rd day of August, 2001.

K. David Gordon
Deputy Superintendent, Pension Division
by delegated authority from
Superintendent of Financial Services

cc: Kim Ozubko
Blake, Cassels & Graydon LLP

[1]NOTE – PURSUANT to section 112 of the *Act* any notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the *"Act"*);

AND IN THE MATTER OF an application pursuant to section 78(1) of the *Act* by Valcom Limited in respect of the **Pension Plan for Employees of Valcom Limited, Registration Number 589796 (formerly PCO Number C-101842)** (the "Plan");

TO: **Valcom Limited**
c/o Cowan Wright Limited
100 Regina Street South, Suite 270
P.O. Box 96
Waterloo, Ontario
N2J 3Z8

Attention: Moira Graham
Actuary
Applicant and Employer

Notice of Proposal Refuse Consent

I PROPOSE TO REFUSE TO CONSENT to the application for payment of surplus to the Employer made pursuant to s. 78(1) of the *Act* and dated July 1998.

I PROPOSE TO REFUSE TO CONSENT TO THE APPLICATION FOR THE FOLLOWING REASONS:

1. The Plan is a defined benefit pension plan. Valcom Limited is the employer as defined in the Plan (the "Employer").
2. On or about July 3, 1997, the Employer provided notice to members that the Plan would be wound up. The Employer stated that the effective date of the wind up was August 31, 1997. In letters dated July 18, 1997, sent to the only two active members, the Employer indicated an intention to share surplus assets with the two active members. In a letter dated August 25, 1997, to the former Pension Commission of Ontario, the Employer stated that all members and former members were provided notice of the wind up and that the effective date of the wind up was changed from August 31, 1997, to September 25, 1997.
3. On or about September 5, 1997, deferred and immediate annuities were purchased in respect of the pension benefits owing to nine former employees who were former members at the time (the "Annuitants").
4. As at September 25, 1997, the surplus in the Plan was estimated at $496,429.
5. The Employer proposes in the Application that 87.9% of the surplus in the Plan, subject to adjustment for investment earnings to the date of payment and subject to adjustment for any difference between the actual and expected costs of obtaining the conditional benefit upgrades referred to in the Surplus Distribution Agreement, be distributed to the Employer. The Employer proposes that the other 12.1% be distributed to the two active members. These active members have signed consents indicating their agreement with the surplus distribution proposed in the Application.
6. The Annuitants are not included in the surplus distribution group nor did the Employer produce agreements signed by these members consenting to the proposed surplus distribution.
7. At the time that notice to wind up the Plan was provided by the Employer to members and former members, the Annuitants were former members within the meaning of s.1 of the *Act*. As such, the Annuitants, at the time that the wind up notice was provided, were entitled to be included in the surplus

consent group pursuant to subsection 8(1)(b) of Regulation 909, R.R.O. 1990, as amended (the "Regulation").

8. As the applicant in the surplus distribution application, the Employer has the onus of demonstrating that the application complies with the *Act* and regulations. The Employer has not provided any evidence to demonstrate that the purchase of annuities on behalf of the Annuitants was consistent with the past practice in the Plan. The Employer has not provided any evidence to demonstrate that the purchase of annuities for the Annuitants just 20 days before the eventual effective date for the wind up and the decision to move the effective date of the wind up from August 31, 1997, to September 25, 1997, were not for the improper purpose of limiting the number of former members entitled to be included in the surplus group set out in subsection 8(1)(b) of the Regulation.
9. The Application, therefore, does not comply with section 79(3)(d) of the *Act*.
10. Such further and other reasons as come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act*, if within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, Ontario
M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at North York, Ontario, this 3rd day of August, 2001.

K. David Gordon
Deputy Superintendent, Pension Division
by delegated authority from
Superintendent of Financial Services

[1]NOTE – PURSUANT to section 112 of the *Act* any notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "*Act*");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to revoke the registration of **Régime de Retraite des Employés et Membres de Canadian Corporation Creation Center, Registration Number 1062363** (the "Plan") pursuant to section 18 of the *Act*;

TO: **Fiducie du Régime de Retraite des Employés et Membres de Canadian Corporation Creation Center**

Attention: Michel Rolland
Designated Trust Administrator
40 Place du Commerce
P.O. Box 63029
Verdun (Nuns Island), Québec
H3E 1V6

Éric Ferron
Trustee
3485 des Érables
Montreal, Québec
H2K 3V6

Michel Dion
Trustee
450 Laurier Avenue
Québec City, Québec
G1R 2L2

Guy Patrick Léveillé
Trustee
1009 Émile Nelligan
Boucherville, Québec
J4B 5J1

Named Administrator

Notice of Proposal

I PROPOSE, PURSUANT TO SECTION 18(1) OF THE *ACT*, TO REVOKE THE REGISTRATION of the Régime de Retraite des Employés et Membres de Canadian Corporation Creation Center, Registration No. 1062363 (the "Plan").

I PROPOSE TO REVOKE THE REGISTRATION FOR THE FOLLOWING REASONS:

Named Administrator

1. The application for registration of the Plan indicates that the Canadian Corporation Creation Center ("CCCC") is the employer for the Plan. The text for the Plan states that the administrator for the Plan is the Fiducie du Régime de Retraite des Employés et Membres de Canadian Corporation Creation Center (Pension Trust Fund of the Employees and Members of Canadian Corporation Creation Center (the "Pension Trust Fund")). The Trust Agreement for the Plan dated June 21, 2000, states that Michel Dion, Éric Ferron and Guy Patrick Léveillé are trustees. Michel Rolland is the Designated Trust Administrator.
2. Section 8 of the *Act* provides an exhaustive list of those entities who are eligible to act as administrators of a pension plan under the *Act*. Section 8 does not permit a pension trust fund to act as an administrator of a single employer pension plan. The Plan purports to be a single employer plan. Therefore, the Pension Trust Fund is not eligible to act as the administrator of the Plan.

Missing Information in the Plan Documents

3. Subsection 10(1) of the *Act* requires that the pension plan set out certain prescribed information. The Plan does not set out the

following information in contravention of the following subclauses of section 10(1):

a. The requirements for entitlement to any pension benefit or ancillary benefit (subclause 5);

b. The mechanism for establishing and maintaining the pension fund (subclause 10);

c. The treatment of surplus during the continuation of the Plan and on windup of the Plan (subclause 11); and

d. The method of allocation of the assets of the Plan on windup (subclause 13).

Declaration

4. Clause 9(2)(e.1) of the *Act* states that an application for registration of a pension plan shall be made by filing, *inter alia*, a "certification in a form approved by the Superintendent and signed by the applicant in which the applicant attests that the pension plan complies with [the] *Act* and regulations." In the application for registration of the Plan, the named administrator attested that:

   a. the documents that create and support the Plan complied with the *Act* and regulations; and

   b. that the named administrator was aware that the obligation to ensure that the documents filed comply with the *Act* and regulations is the responsibility of the administrator and that this obligation was fulfiled.

5. The named administrator has contravened clause 9(2)(e.1) of the *Act* in that the declaration provided in the application for registration was false because the documents that create and support the Plan do not comply with the *Act* as set out above.

Members of the Pension Plan

6. Sections 27 and 28 of the Plan state that only employees of an employer that belongs to the Plan are eligible to participate in the Plan. Section 1 of the *Act* defines an employer as a "the person from whom or the organization from which the member or former member receives or received remuneration to which the pension plan is related."

7. The Superintendent has information which indicates that the Plan is accepting transfers of funds from locked-in retirement accounts or other similar prescribed retirement savings arrangements from individuals who do not receive remuneration from an employer that belongs to the Plan. Therefore, such persons are not employees, within the meaning of section 1 of the *Act*, of an employer that belongs to the Plan. The Plan's acceptance of such transfers contravenes the terms of the Plan.

8. Clause 19(3)(a) of the *Act* states that the administrator of a pension plan shall ensure that the pension plan and pension fund are administrated in accordance with the "filed documents in respect of which the Superintendent has issued an acknowledgement of application for registration or a certificate of registration". The acceptance of fund transfers in respect of individuals who are not employees of an employer that belongs to the Plan is a contravention of section 27 and 28 of the Plan and, therefore, constitutes a contravention of clause 19(3)(a) of the *Act*.

9. The transfer of funds from locked-in retirement accounts or other similar prescribed retirement savings arrangements in respect of account holders who are not members of

the Plan constitutes a commutation or surrender of a prescribed savings arrangement contrary to section 67 of the *Act* because such funds are not capable of being commuted or surrendered (subject to certain exceptions which do not apply in this case).

Transfer of Funds from the Plan

10. Subsection 22(1) of the *Act* states that "the administrator of a pension plan shall exercise the care, diligence and skill required in the administration and investment of the pension fund that a person of ordinary prudence would exercise in dealing with the property of another person." Subsection 22(4) states that an administrator "shall not knowingly permit the administrator's interest to conflict with the administrator's duties and powers in respect of the pension fund."

11. The Superintendent has information that indicates that funds from the pension fund in respect of the Plan have been transferred from the pension fund to bank accounts held by companies named National Business Investment In Trust Inc. ("NBI In Trust"), National Business Investment Canada Inc. ("NBI Canada") and/or CCCC (the employer under the application for registration). In filings with the Companies Branch of the Ontario Ministry of Consumer and Commercial Relations, Michel Rolland, Designated Trust Administrator for the Pension Trust Fund, is listed as the administrator for NBI In Trust. In banking records, Michel Rolland is listed as the "owner/signing officer" for NBI In Trust and Michel Rolland and Michel Dion are listed as authorized representatives for NBI Canada.

12. In transferring or allowing the transfer of funds from the pension fund to the NBI In Trust, NBI Canada and/or CCCC bank accounts, the Pension Trust Fund as the named administrator has permitted the use or diversion of funds for purposes other than the purpose of the Plan in contravention of the trust agreement and subsection 22(1) of the *Act*.

13. In addition, the Pension Trust Fund has contravened subsection 22(4) of the *Act* because it has knowingly permitted its own interest to conflict with its duties and powers in respect of the pension fund in that Michel Rolland is an officer of NBI In Trust and Michel Rolland and Michel Dion are authorized representatives of NBI Canada. Lastly, funds have been transferred from the pension fund to accounts held by CCCC, which contravenes subsection 78(1) of the *Act*. Subsection 78(1) of the *Act* states that no money may be paid out of a pension fund to the employer without the prior consent of the Superintendent.

Investments

14. Section 62 of the *Act* states that the investments to be made with the assets of the pension fund shall be selected in accordance with the criteria set out in the *Act* and regulations. Section 79 of the Regulation states that assets of a pension plan shall be invested in accordance with the federal investment regulations. Clause 6(1)(b)(i) of the *Pension Benefits Standards Regulations*, 1985, SOR/87-19 to the *Pension Benefits Standards Act*, 1985, R.S.C. 1985, c. 32 as amended, states that the moneys of the pension fund are to be invested in a name that clearly indicates that the investment is held in trust for the plan or in the

name of a financial institution or The Canadian Depository for Securities Limited in accordance with a trust or custodial agreement that clearly indicates that the investment is held for the plan.

15. The moneys of the pension fund are not being invested in trust for the Plan nor are they being held in the name of a financial institution and/or The Canadian Depository for Securities Limited in accordance with a trust or custodial agreement that clearly indicates that the investment is held for the Plan. The named administrator has, therefore, failed to select the investments for the pension fund in accordance with the criteria set out in the *Act* and regulations in contravention of section 62 and subsection 22(1) of the *Act* and section 79 of the Regulation.

Assignments of Locked In Accounts

16. Section 65 of the *Act* states that every transaction that purports to assign, charge, anticipate or give as security, money payable under a pension plan or transferred from a pension fund is void. The Superintendent has information that indicates that the funds transferred to the pension fund in respect of the Plan from locked in retirement accounts or other prescribed retirement arrangements have been assigned, charged, anticipated or given as security in favour of NBI In Trust in return for the extension of a loan from NBI In Trust to the holder of the prescribed retirement arrangement. Such transactions are unlawful and void pursuant to section 65 of the *Act*. The named administrator has accepted the transfer of funds from locked in retirement accounts or other prescribed retirement arrangements which funds have been assigned, charged, anticipated or given as security in contravention of section 65 of the *Act*.

Annual Filings

17. Subsection 20(1) of the *Act* states that the administrator "shall file each year an annual information return in respect of the pension plan ... and shall pay the filing fee established by the Minister." Subsection 20(2) of the *Act* states that the administrator "shall file additional reports at the times and containing the information prescribed by the regulations."

18. Subsection 18(1) of Regulation 909, R.R.O. 1990, as amended (the "Regulation") states that the administrator shall file the annual information return not later than six months after the end of the fiscal year of the plan in the case of a defined contribution plan. Subsections 76(1) and (2) of the Regulation state that the administrator shall file financial statements for the pension plan or fund as at the plan's fiscal year end and if at the fiscal year end the plan has $3,000,000 or more in assets, the administrator shall file an auditor's report respecting the financial statements. Subsection 76(4) of the Regulation states that the financial statement and auditor's report shall be filed within six months after each fiscal year end for the plan.

19. The Plan is a defined contribution pension plan. The fiscal year end for the Plan is December 31. No annual information return, financial statements or auditor's report (if required) have been filed by the Pension Trust Fund to date in contravention of section 20 of the *Act* and subsections 18(1), 76(1), 76(2) and 76(4) of the Regulation.

Information Requested by the Superintendent

20. Subsection 98(1) of the *Act* states that "[t]he Superintendent may require an employer, an administrator or any other person to supply the Superintendent such information ... for the purpose of ascertaining whether or not [the] *Act* and the regulations are being complied with". The Superintendent has requested certain information regarding the Plan pursuant to section 98 of the *Act*. Subsection 98(2) of the *Act* stipulates that the person to whom a request is made under subsection 98(1) of the *Act* must comply with the request within the time specified by the Superintendent. To date, the information requested has not been filed with the Superintendent by the named administrator. The named administrator, in failing to respond to a request for information pursuant to section 98 of the *Act*, has failed to administer the plan in accordance with the *Act*.

Conclusion

21. Clause 18(1)(b) of the *Act* states that the Superintendent may "revoke the registration of a pension plan that does not comply with [the] *Act* and the regulations". The Superintendent proposes to revoke the registration of the Plan pursuant to clause 18(1)(b) of the *Act* for the following reasons:

    a. The named administrator of the Plan, the Pension Trust Fund, is not eligible to act as the administrator of the Plan under section 8 of the *Act*; and

    b. The documents that create and support the Plan do not set out the information specified in paragraph 3 above in contravention of section 10 of the *Act*.

22. Clause 18(1)(c) of the *Act* states that the Superintendent may "revoke the registration of a pension plan that is not being administered in accordance with [the] *Act* and the regulations". The Superintendent proposes to revoke the registration of the Plan pursuant to clause 18(1)(c) of the *Act*, for the following reasons:

    a. The named administrator has provided a false declaration that the plan complies with the *Act* and regulations in contravention of clause 9(2)(e.1) of the *Act*;

    b. The named administrator is accepting transfers of funds from persons who are not eligible to participate in the Plan in contravention of the Plan and, hence, in contravention of the clause 19(3)(a) of the *Act*;

    c. The named administrator is accepting transfers from locked in retirement accounts or other prescribed retirement arrangements which transfers constitute a commutation or surrender of a prescribed retirement arrangement in contravention of section 67 of the *Act*;

    d. The named administrator has not exercised the care, diligence and skill that a person of ordinary prudence would exercise in dealing with the property of another person because it transferred or permitted the transfer of funds from the pension fund to NBI In Trust, NBI Canada and/or CCCC in contravention of subsection 22(1) of the *Act*;

    e. The named administrator has knowingly permitted its own interest to conflict with its duties and powers in respect of the pension fund by transferring or permitting the transfer of funds from the pension fund to NBI In Trust, NBI Canada and/or CCCC in

contravention of subsection 22(4) of the *Act*;

f. The named administrator has failed to select the investments for the pension fund in accordance with the *Act* and regulations in contravention of section 62 and subsection 22(1) of the *Act* and section 79 of the Regulation;

g. The named administrator has accepted the transfer of funds from locked in retirement accounts or other prescribed retirement arrangements which funds have been assigned, charged, anticipated or given as security in contravention of section 65 of the *Act*;

h. The named administrator has failed to file the annual information return, financial statements and auditor's report (if required) within the prescribed time limits in contravention of section 20 of the *Act* and subsections 18(1), 76(1), 76(2) and 76(4) of the Regulation; and

i. The named administrator failed to provide information requested by the Superintendent in contravention of section 98 of the *Act*.

23. Such further and other reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the *Act*, if within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, Ontario
M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at North York, Ontario, this 10th day of August, 2001.

Philip Howell
Chief Executive Officer and
Superintendent of Financial Services (Acting)

[1]NOTE – PURSUANT to section 112 of the *Act* any notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

IN THE MATTER OF the *Pension Benefits Act,* R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997,* S.O. 1997, c. 28 (the *"Act"*);

AND IN THE MATTER OF a proposal by the Superintendent of Financial Services to make an Order under section 87 of the *Act* in respect of the **Pension Plan for Salaried Employees of Canadian Tack & Nail Ltd., Registration Number 0581306** (the "Plan");

TO: **Canadian Tack & Nail Ltd.**
431 Dundas St.,
Cambridge, Ontario
N1R 5W6

Attention: Gary Ayers
Vice President/General Manager
Administrator of the Plan

Notice of Proposal to Make An Order

I PROPOSE TO MAKE AN ORDER under section 87 of the *Act,* requiring the Employer or Administrator of the Plan to remit within thirty days of receiving this Notice outstanding contributions in the amount $67,933, as of December 31, 1999, owed to the Pension Fund, together with interest payable under section 24 of Regulation 909 under the *Act.*

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. An actuarial valuation received by the Superintendent filed effective December 31, 1999, shows outstanding employer contributions to the Pension Fund of $67,933.
2. The Plan Administrator has failed to remit the outstanding contributions.
3. Section 55(2) of the *Act* requires contributions to be made to the pension plan in the prescribed manner and in accordance with the prescribed requirements for funding.
4. Section 56(1) of the *Act* requires the administrator of a pension plan to ensure that all contributions are paid when due.
5. Regulation 909 under the *Act* prescribes funding requirements for pension plans. Subsection 4(2) requires an employer or another person required to make contributions to the fund, to pay amounts that are not less than all contributions required to pay the normal cost and all special payments determined in accordance with the requirements of the regulation.
6. Subsection 4(4) of Regulation 909 requires contributions in respect of the normal cost of a plan to be made in monthly instalments payable within thirty days of the month for which contributions are due.
7. Subsection 4(4) of Regulation 909 requires contributions in respect of special payments in respect of any fiscal year to be made within thirty days after the end of the fiscal year, and to be made in equal monthly instalments in accordance with the requirements of the regulation.
8. Section 2.3 of the Plan provides that the funding of the Plan shall be in accordance with the *Act* to meet funding and solvency requirements. Section 4.4 of the Plan requires contributions to be made in accordance with the *Act,* and to be deposited within 30 days after the end of the month in which service was rendered.
9. In failing to remit in full the required contributions to the fund as prescribed pursuant to Regulation 909, and as required under the Plan, the employer is failing to administer the Plan and the Fund in accordance with the *Act,* the regulations and the pension plan.

10. In failing to remit in full the required contributions to the fund as prescribed pursuant to Regulation 909, and as required under the Plan, the employer is contravening the requirements of section 55 of the *Act,* and section 4 of the Regulation.
11. Subsection 87(2) of the *Act* allows the Superintendent to make an order if the Superintendent is of the opinion, upon reasonable and probable grounds, that the pension plan or fund is not being administered in accordance with the *Act,* the regulations or the pension plan.
12. Subsection 87(2) of the *Act* allows the Superintendent to make an order if the Superintendent is of the opinion, upon reasonable and probable grounds, that the employer, the administrator of a pension plan, or any other person is contravening a requirement of the *Act* or the regulations.
13. Such further and other grounds as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act,* if within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, Ontario
M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at North York, Ontario, this 14th day of August, 2001.

K. David Gordon
Deputy Superintendent, Pension Division
by delegated authority from
Superintendent of Financial Services

[1]NOTE – PURSUANT to section 112 of the *Act* any notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the *"Act"*);

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to revoke the registration of **Régime de Retraite des Employés et Membres de Canadian Corporation Creation Center, Registration Number 1062363** (the "Plan") pursuant to section 87 of the *Act*;

TO: **TD Canada Trust**
Corporate Banking
TD Centre
27th Floor
Toronto, Ontario
M5K 1A2

Attention: Mr. Ed Clark
Chief Executive Officer

Fiducie du Régime de Retraite des Employés et Membres de Canadian Corporation Creation Center

Attention: Michel Rolland
Designated Trust Administrator
40 Place du Commerce
P.O. Box 63029
Verdun (Nuns Island), Québec
H3E 1V6

Éric Ferron
Trustee
3485 des Érables
Montreal, Québec
H2K 3V6

Michel Dion
Trustee
450 Laurier Avenue
Québec City, Québec
G1R 2L2

Guy Patrick Léveillé
Trustee
1009 Émile Nelligan
Boucherville, Québec
J4B 5J1

Named Administrator

Notice of Proposal

I PROPOSE, pursuant to section 87 of the *Act*, **TO ORDER**, effective the date of the order, that TD Canada Trust refrain from paying out, transferring, releasing or otherwise removing any moneys relating to the Régime de Retraite des Employés et Membres de Canadian Corporation Creation Center, Registration No. 1062363 (the "Plan"), from all accounts held at TD Canada Trust, including but not limited to the accounts corresponding to the following account numbers: 345-597827; 345-597806; and 345-597541; and that TD Canada Trust hold the moneys relating to the Plan in a name that clearly indicates that the moneys are invested in trust for the Plan or in the name of TD Canada Trust in accordance with a trust or custodial agreement that clearly indicates that the moneys are invested in an investment that is held for the Plan.

I PROPOSE TO MAKE THE ORDER FOR THE FOLLOWING REASONS:

Deputy Superintendent's Direction

1. On or about August 3, 2001, the Deputy Superintendent, Pension Division (the "Deputy Superintendent"), issued a Notice indicating that he was acting as administrator for the Plan pursuant to subsection 71(1) of the *Act*. Subsection 71(1) of the *Act* states that "if a pension plan that is to be wound up in whole or in part does not have an administrator or the administrator

fails to act, the Superintendent may act as or may appoint an administrator."

2. Subsection 18(5) of the *Act* states that "where the registration of a pension plan is refused or revoked, the administrator shall wind up the pension plan in accordance with [the] *Act* and the regulations". On August 10, 2001, the Superintendent of Financial Services (the "Superintendent") issued a Notice of Proposal to revoke the registration of the Plan pursuant to subsection 18(1) of the *Act*. A copy of the August 10, 2001 Notice of Proposal is attached hereto as Schedule "A". The reasons for the August 10, 2001 Notice of Proposal are, *inter alia*, that the Plan does not comply with the *Act* and that the Plan is not being administered in accordance with the *Act*. The reasons set out in the August 10, 2001 Notice of Proposal are adopted and relied upon as reasons to support this Notice of Proposal. By virtue of the August 10, 2001 Notice of Proposal and subsection 18(5) of the *Act* the Plan is to be wound up.
3. The application for registration of the Plan states that Canadian Corporation Creation Center ("CCCC") is the employer for the Plan. The text for the Plan states that the administrator for the Plan is the Fiducie du Régime de Retraite des Employés et Membres de Canadian Corporation Creation Center (Pension Trust Fund of the Employees and Members of Canadian Corporation Creation Center (the "Pension Trust Fund"). The Trust Agreement for the Plan dated June 21, 2000, states that Michel Dion, Éric Ferron and Guy Patrick Léveillé are trustees. Michel Rolland is the Designated Trust Administrator.
4. Section 8 of the *Act* provides an exhaustive list of those entities who are eligible to act as administrators of a pension plan under the *Act*. Section 8 does not permit a pension trust fund to act as an administrator of a single employer pension plan. The Plan purports to be a single employer plan.
5. Therefore, the Pension Trust Fund is not eligible to act as the administrator of the Plan and the Plan does not have a valid administrator. The Deputy Superintendent, by authority delegated from the Superintendent and pursuant to subsection 71(1) of the *Act*, is eligible to act as the administrator. As administrator, the Deputy Superintendent is required under subsection 19(1) of the *Act* to "ensure that the pension plan and pension fund are administered in accordance with [the] *Act* and regulations."
6. The Deputy Superintendent has reason to believe that some or all of the assets of the Plan are or may be held in a number of accounts with TD Canada Trust under the names CCCC, Canadian Corporation Creation Center (pension plan), National Business Investment In Trust Inc., NBI In Trust Inc. ("NBI In Trust") and National Business Investment Canada Inc. ("NBI Canada") including but not limited to the accounts corresponding to the following account numbers: 354-597827, 345-597806 and 345-597541(the "identified accounts").
7. In a letter dated August 3, 2001, the Deputy Superintendent, in his capacity as administrator, directed TD Canada Trust to ensure that no moneys in the identified accounts are paid out, transferred or otherwise removed from these accounts.
8. TD Canada Trust has not complied with the Deputy Superintendent's August 3, 2001,

direction and funds have been removed from the identified accounts both prior and subsequent to August 3, 2001.

Investment and Deposit of the Assets of the Plan

9. Subsection 22(1) of the *Act* states that "the administrator of a pension plan shall exercise the care, diligence and skill required in the administration and investment of the pension fund that a person of ordinary prudence would exercise in dealing with the property of another person." Subsection 22(4) states that an administrator "shall not knowingly permit the administrator's interest to conflict with the administrator's duties and powers in respect of the pension fund."

10. The Deputy Superintendent has information that indicates that assets of the pension fund in respect of the Plan have been deposited in the identified accounts by NBI In Trust, NBI Canada, National Business Investment In Trust Inc. and/or CCCC (the employer under the application for registration). In filings with the Companies Branch of the Ontario Ministry of Consumer and Commercial Relations, Michel Rolland, Designated Trust Administrator for the Pension Trust Fund, is listed as the administrator for NBI In Trust. In banking records, Michel Rolland is listed as the "owner/signing officer" for NBI In Trust, and Michel Rolland and Michel Dion are listed as authorized representatives for NBI Canada.

11. In depositing or allowing the deposit of assets of the pension fund in the NBI In Trust, NBI Canada and/or CCCC bank accounts and in permitting the further withdrawal of pension assets from the identified accounts, the Pension Trust Fund as the named administrator has permitted the use or diversion of funds for purposes other than the purpose of the Plan in contravention of the trust agreement and subsection 22(1) of the *Act*.

12. In addition, the Pension Trust Fund has contravened subsection 22(4) of the *Act* because it has knowingly permitted its own interest to conflict with its duties and powers in respect of the pension fund in that Michel Rolland is an officer of NBI In Trust and Michel Rolland and Michel Dion are authorized representatives of NBI Canada. Lastly, pension funds have been deposited in accounts held by CCCC, which contravenes subsection 78(1) of the *Act*. Subsection 78(1) of the *Act* states that no money may be paid out of a pension fund to the employer without the prior consent of the Superintendent.

13. Section 62 of the *Act* states that the investments to be made with the assets of the pension fund shall be selected in accordance with the criteria set out in the *Act* and regulations. Section 79 of Regulation 909, R.R.O. 1990, as amended (the "Regulation") states that the assets of a pension plan shall be invested in accordance with the federal investment regulations. Clause 6(1)(b)(i) of the *Pension Benefits Standards Regulations*, 1985, SOR/87-19 to the *Pension Benefits Standards Act*, 1985, R.S.C. 1985, c. 32 as amended, states that the moneys of the pension fund are to be invested in a name that clearly indicates that the investment is held in trust for the plan or in the name of a financial institution or The Canadian Depository for Securities Limited in accordance with a trust or custodial agreement that clearly indicates that the investment is held for the plan.

14. The moneys of the pension fund are not being invested in trust for the Plan nor are they being held in the name of a financial institution and/or The Canadian Depository for Securities Limited in accordance with a trust or custodial agreement that clearly indicates that the investment is held for the Plan. The named administrator has, therefore, failed to select the investments for the pension fund in accordance with the criteria set out in the *Act* and regulations in contravention of section 62 and subsection 22(1) of the *Act* and section 79 of the Regulation.

Conclusion

15. Subsection 87(1) of the *Act* states that the "Superintendent, in the circumstances mentioned in subsection [87](2) and subject to section 89 (hearing and appeal), by a written order may require an administrator or any other person to take or to refrain from taking any action in respect of a pension plan or a pension fund."

16. Subsection 87(2) of the *Act* states that the Superintendent may make an order under section 87 "if the Superintendent is of the opinion, upon reasonable and probable grounds,

a. That the pension plan or pension fund is not being administered in accordance with [the] *Act*, the regulations or the pension plan;

b. That the pension plan does not comply with [the] *Act* and the regulations; or

c. That the administrator of the pension plan, the employer or other person is contravening a requirement of [the] *Act* or the regulations."

17. The Superintendent proposes to issue the proposed order pursuant to clause 87(2)(a) of the *Act* on the following basis:

a. The named administrator has not exercised the care, diligence and skill that a person of ordinary prudence would exercise in dealing with the property of another person because it deposited or permitted the deposit of pension funds into the identified accounts held by National Business Investment In Trust Inc., NBI In Trust Inc., National Business Investment Canada Inc. and/or CCCC and further it permitted the withdrawal of pension assets from the identified accounts in contravention of subsections 22(1) and 78(1) of the *Act*;

b. The named administrator has knowingly permitted its own interest to conflict with its duties and powers in respect of the pension fund by depositing or permitting the deposit of pension funds into the identified accounts held by CCCC, National Business Investment In Trust Inc., NBI In Trust Inc. and/or National Business Investment Canada Inc. in contravention of subsection 22(4) of the *Act*; and

c. The pension fund has not been invested in accordance with the *Act* and regulations in contravention of section 62 and subsection 22(1) of the *Act* and section 79 of the Regulation.

19. Such further and other reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the *Act*, if within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, Ontario
M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at North York, Ontario, this 15th day of August, 2001.

K. David Gordon
Deputy Superintendent, Pension Division
by delegated authority from
Superintendent of Financial Services

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IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the *"Act"*);

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order, pursuant to section 69 of the *Act*, respecting the **Pension Plan for Executives of William H. Kaufman Inc., Registration Number 999631** (the "Plan");

TO: **The Standard Life Assurance Company**
1245 Sherbrooke Street West,
Montreal, Québec
H3G 1G3

Attention: Jean-Claude Lebel
Pension Actuary
Administrator

AND TO: **William H. Kaufman Inc.**
P.O. Box 9005, Kitchener Stn. C,
410 King St. West,
Kitchener, Ontario
N2G 4J8

Attention: Stuart Snyder
Secretary Treasurer
Employer

Notice of Proposal to Make an Order

I PROPOSE TO ORDER that the Pension Plan for Executives of William H. Kaufman Inc., Registration No. 999631 (the "Plan"), be wholly wound up effective July 21, 2000.

I PROPOSE to make this order pursuant to subsection 69(1) of the *Act*.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. There was a cessation or suspension of employer contributions to the pension fund, within the meaning of clause 69(1)(a) of the *Act*.
2. The employer failed to make contributions to the pension fund as required by the *Act* or the regulations within the meaning of clause 69(1)(b) of the *Act*.
3. The employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada), R. S. C. 1985, c. B-3, as amended, pursuant to clause 69(1)(c) of the *Act*.
4. A significant number of members of the pension plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer within the meaning of clause 69(1)(d) of the *Act*.
5. All or a significant portion of the business carried on by the employer at a specific location was discontinued within the meaning of clause 69(1)(e) of the *Act*.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to subsection 89(6) of the *Act*, if within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

Any notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, Ontario
M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

THE ADMINISTRATOR IS REQUIRED, pursuant to subsection 89(5) of the *Act*, to transmit a copy of this Notice of Proposal to Make an Order to the following persons:

Ernst & Young Inc.
Toronto-Dominion Centre,
P.O. Box 251, 222 Bay Street,
Toronto, Ontario
M5K 1J7

Attention: Philip Kan
Interim Receiver and Receiver and Trustee in Bankruptcy for William H. Kaufman Inc.

DATED at North York, Ontario, this 17th day of August, 2001.

K. David Gordon
Deputy Superintendent, Pension Division
by delegated authority from
Superintendent of Financial Services

NOTE – PURSUANT to section 112 of the *Act* any notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the *"Act"*);

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the *Act* consenting to a payment out of the **Ebasco Services of Canada Limited Salaried Employees Retirement Plan, Registration Number 0546093**;

TO: **Ebasco Services of Canada Limited**
c/o TXU Gas Company
1601 Bryan Street
Dallas, Texas
75201-3411
U.S.A.

Attention: John F. Stephens, Jr.
Assistant Secretary of TXU Gas Company
Applicant and Employer

Notice of Proposal

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the *Act*, consenting to the payment out of the Ebasco Services of Canada Limited Salaried Employees Retirement Plan, Registration No. 0546093 (the "Plan"), to Ebasco Services of Canada in the amount of $161,090, plus investment earnings minus expenses incurred thereon to the date of payment.

I PROPOSE TO MAKE THE ORDER effective only after the Applicant satisfies me that all benefits, benefit enhancements (including benefits and benefit enhancements pursuant to the Surplus Distribution Agreement defined in paragraph 5 below) and any other payments to which the members, former members, and any other persons entitled to such payments have been paid, purchased, or otherwise provided for.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. Ebasco Services of Canada is the employer as defined in the Plan (the "Employer").
2. The Plan was wound up, effective April 1, 1987.
3. As at April 1, 1987, the surplus in the Plan was estimated at $208,810.
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
5. The application discloses that by written agreement made by the Employer, and 66⅔% of the former members and other persons entitled to payments, the surplus in the Plan at the date of payment, after deduction of wind up expenses, is to be distributed:
   a) 50% to the Employer; and
   b) 50% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.
6. The Employer has applied, pursuant to section 78 of the *Act*, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 50% of the net surplus in the Plan.
7. The application appears to comply with section 78 and subsection 79(3)(a) and (b) of the *Act* and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.
8. Such further and other reasons as come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act*, if within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, Ontario
M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at North York, Ontario, this 20th day of August, 2001.

K. David Gordon
Deputy Superintendent, Pension Division
by delegated authority from
Superintendent of Financial Services

cc: **Mr. Jeff Chuchman**
Financial Services
Commission of Ontario

Mr. Duncan B. Richardson
William M. Mercer Ltd.

Mr. Frank Peterson
32 Tara Avenue
Scarborough, Ontario
M1K 4B1

Mr. Bharat Mohan Kukreti
88 Harvest Moon Drive
Markham, Ontario
L3R 4L6

Mr. Naso S. Janovsky
1233 Scottsburg Cres.
Mississauga, Ontario
L4W 2Z9

Mr. C.W. So
23 Kerbar Road
Scarborough, Ontario
M1V 1G2

Mr. Ronald C. Chambers
6 Willowgate Drive
Markham, Ontario
L3P 1G2

Mr. John W. Staines
121 Trayburn Drive
Richmond Hill, Ontario
L4C 4K6

Mr. Ronaldo V. Olay
1492 Islington Avenue
Etobicoke, Ontario
M9A 3L5

Mr. W. Milczyn
513-2313 Lake Shore Blvd. W.
Toronto, Ontario
M8V 1A8

Mr. Patrick Kam
69 Canlish Road
Scarborough, Ontario
M1P 1S6

Mr. R. Mitchell
4044 Powderhorn Court
Mississauga, Ontario
L5L 3C4

Mr. Basil W. Pearce
Unit 1800
55 Kingsbridge Garden Circle
Mississauga, Ontario
L5R 1Y1

Mr. B. Ivsins
395 Martha Street
Suite 607
Burlington, Ontario
L7R 4A9

Mr. Robert Cudden
43 Tremont Crescent
Don Mills, Ontario
M3B 2R9

Mr. Pinaki Ranjan Roy
77 Howard Street
Apartment 905
Toronto, Ontario
M4X 1J9

Mr. George Poulos
369 Ellis Park Road
Toronto, Ontario
M6S 2V7

Mr. Michael M. Salamon
256 Armour Blvd.
North York, Ontario
M3H 1N3

Mr. Miguel Hortiguela
331 Trudelle Street
Unit 53
Scarborough, Ontario
M1J 3J9

Mr. Maurice Titmuss
6233 191A Street
Surrey, British Columbia
V3S 8C6

Mr. Gerald P. Barron
67 Dewlane Drive
Willowdale, Ontario
M2R 2P9

Mr. Robert Rollinson-Lorimer
566 Hawthorne Cres.
Milton, Ontario
L9T 4N8

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IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the *"Act"*);

AND IN THE MATTER OF an application pursuant to s. 78(1) of the *Act* submitted by City Of Kitchener in respect of **The Corporation of the City of Kitchener Pension Plan for Fire Department Employees, Registration Number 239475** (the "Plan");

TO: **City of Kitchener**
City Hall, P.O. Box 1118
200 King Street West
Kitchener, Ontario
N2G 4G7

Attention: Ms. Rosemary Upfold, Director of Accounting
Applicant and Employer

Notice of Proposal to Refuse to Consent To Application

I PROPOSE TO REFUSE TO CONSENT to the application for payment of surplus to the employer dated July 17, 2000, pursuant to s. 78(1) of the *Act*.

I PROPOSE TO REFUSE TO CONSENT TO THE APPLICATION FOR THE FOLLOWING REASONS:

1. In 1946, the documents which created the Plan (including the Employee Booklet) required that the member and employer contributions would be applied to effect a group life and pension policy with the Standard Life Assurance Company (the "Policy"). The documents which created the Plan also provided that the employer would hold in trust for the benefit of members the Policy and all the benefits payable thereunder. Those documents, although amended on January 1, 1958, continued until 1973 to provide that the employer would hold the Policy in trust for the benefit of members. Hence the Plan provided that the Policy would be held in trust for the benefit of the members from its inception.
2. Since the member and employer contributions were to be used to purchase the Policy and since the Policy and all benefits payable thereunder were to be held in trust for the members, any excess amounts available under the Policy, after the payment of benefits, would be subject to the trust for the benefit of the members and not the employer.
3. Any policy purchased using member and employer contributions made pursuant to the Plan would also be subject to the same trust provisions as the Policy.
4. In 1978, for the first time, the Plan documents were amended to provide that the surplus belonged to the employer, the City of Kitchener. However since the Plan was subject to a trust prior to 1978, that amendment would have been void, unless the employer reserved the power to revoke the trust.
5. The provisions in the Plan documents prior to 1978 which reserved a right to the employer to amend or discontinue the Plan, did not give the employer the power to revoke the trust.
6. Therefore the employer has not demonstrated that it has complied with s. 79(3)(b) of the *Act*, which requires that the Plan provide for payment of surplus to the employer on the wind up of the Plan.
7. The employer has not demonstrated that the required level of consent required by clause 8(1)(b) of Regulation 909 made under the *Pension Benefits Act*, R.S.O. 1990

Ch P.8, as amended, for the 76 former members shown in the wind up report as entitled to payments under the pension plan on the date of wind up, has been achieved.

8. Such further and other reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act*, if within thirty (30) days after the Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, Ontario
M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at North York, Ontario, this 23rd day of August, 2001.

K. David Gordon
Deputy Superintendent, Pension Division
by delegated authority from
Superintendent of Financial Services

[1] NOTE – PURSUANT to section 112 of the *Act* any notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the *"Act"*);

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 69 of the *Act* in respect of **The Retirement Plan for Hourly Employees of Superior Machine and Tool (Chatham) Limited, Registration Number 327601** (the "Plan");

TO: **Morneau Sobeco**
Deloitte & Touche Inc. by its agent
1500 Don Mills Road, Suite 500
Toronto, Ontario
M3B 3K4

Attention: Al Kiel
Partner
Administrator

AND TO: **Superior Machine & Tool (Chatham) Limited**
227 William Street South
Chatham, Ontario
N7M 4T3

Attention: Mike Fife
Manager, Administrative Services
Employer

Notice of Proposal

I PROPOSE TO MAKE AN ORDER in respect of the Plan under subsection 69(1) of the *Act*.

PROPOSED ORDER:

The Retirement Plan for Hourly Employees of Superior Machine and Tool (Chatham) Limited, Registration No. 327601, be wound up in whole for those members of the Plan who ceased to be employed effective between July 7, 1999, and July 8, 1999.

REASONS FOR THE ORDER:

1. The employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada), R.S.C. 1985, c. B-3, as amended, pursuant to clause 69(1)(c) of the *Act*.
2. A significant number of members of the pension plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer within the meaning of clause 69(1)(d) of the *Act*.
3. All or a significant portion of the business carried on by the employer at a specific location was discontinued within the meaning of clause 69(1)(e) of the *Act*.
4. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act*, if within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, Ontario
M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY MAKE THE ORDER PROPOSED IN THIS NOTICE.

THE ADMINISTRATOR IS REQUIRED, pursuant to subsection 89(5) of the *Act*, to transmit a copy of this Notice of Proposal to the following persons:

Zwaig Associates Inc.
Suite 1470, Exchange Towers
P.O. Box 17
130 King Street West
Toronto, Ontario
M5X 1A9

Attention: Sean Hinkson
Consultant
Interim Receiver and Trustee in Bankruptcy for Superior Machine & Tool (Chatham) Limited

DATED at North York, Ontario, this 29th day of August, 2001.

K. David Gordon
Deputy Superintendent, Pension Division
by delegated authority from
Superintendent of Financial Services

'NOTE – PURSUANT to section 112 of the *Act* any notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the *"Act"*);

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 69 of the *Act* in respect of the **Superior Machine and Tool (Chatham) Limited Retirement Plan for Salaried Employees, Registration Number 691642** (the "Plan");

TO: **Deloitte & Touche Inc.**
by its agent
Morneau Sobeco
1500 Don Mills Road, Suite 500
Toronto, Ontario
M3B 3K4

Attention: Al Kiel
Partner
Administrator

AND TO: **Superior Machine & Tool** (Chatham) Limited
227 William Street South
Chatham, Ontario
N7M 4T3

Attention: Mike Fife
Manager, Administrative Services
Employer

Notice of Proposal

I PROPOSE TO MAKE AN ORDER in respect of the Plan under subsection 69(1) of the *Act*.

PROPOSED ORDER:

The Superior Machine and Tool (Chatham) Limited Retirement Plan for Salaried Employees, Registration No. 691642, be wound up in whole for those members of the Plan who ceased to be employed effective between July 7, 1999, and July 8, 1999.

REASONS FOR THE ORDER:

1. The employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada), R.S.C. 1985, c. B-3, as amended, pursuant to clause 69(1)(c) of the *Act*.
2. A significant number of members of the pension plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer within the meaning of clause 69(1)(d) of the *Act*.
3. All or a significant portion of the business carried on by the employer at a specific location was discontinued within the meaning of clause 69(1)(e) of the *Act*.
4. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act*, if within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, Ontario
M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

THE ADMINISTRATOR IS REQUIRED, pursuant to subsection 89(5) of the *Act*, to transmit a copy of this Notice of Proposal to the following persons:

Zwaig Associates Inc.
Suite 1470, Exchange Towers
P.O. Box 17
130 King Street West
Toronto, Ontario
M5X 1A9

Attention: Sean Hinkson
Consultant
Interim Receiver and Trustee in Bankruptcy for Superior Machine & Tool (Chatham) Limited

DATED at North York, Ontario, this 29th day of August, 2001.

K. David Gordon
Deputy Superintendent, Pension Division
by delegated authority from
Superintendent of Financial Services

[1]NOTE – PURSUANT to section 112 of the *Act* any notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28;

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28, respecting the **Retirement Plan for the Hourly Employees of Superior Machine and Tool (Chatham) Limited, Registration Number 0327601**;

TO: **Morneau Sobeco**
Suite 500
1500 Don Mills Road
Toronto, Ontario
M3B 3K4

Attention: Mr. Al Kiel
Administrator

AND TO: **Superior Machine and Tool (Chatham) Limited**
277 William Street South
Chatham, Ontario
N7M 4T3

Attention: Mr. Mike Fife
Employer

AND TO: **Zwaig Consulting Inc.**
Suite 1560, Exchange Tower
P.O. Box 17, 130 King Street West
Toronto, Ontario
M5X 1J5

Attention: Mr. Jeffrey D. Kerbel
Trustee in Bankruptcy and Interim Receiver and Manager

Notice of Proposal to Make a Declaration

WHEREAS:

1. The Retirement Plan for Hourly Employees of Superior Machine and Tool (Chatham) Limited, Registration No. 327601 (the "Plan"), is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "*Act*"); and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the *Act* or the regulations made thereunder; and
3. The Superintendent of Pensions appointed Deloitte & Touche Inc. as the administrator of the Plan on December 22, 1999, and Morneau Sobeco (the "Administrator") is the agent acting for Deloitte & Touche Inc.; and
4. The Administrator had requested from the Superintendent of Financial Services on September 27, 2000, that an Order be issued to wind up the Plan effective July 7, 1999; and
5. A Notice of Proposal to make an Order to wind up the Plan, dated August 29, 2001, effective from July 7, 1999, to July 8, 1999, was served on the administrator on September 6, 2001; and
6. The Administrator filed on August 10, 2001, an application for a declaration that the Guarantee Fund applies to the Plan in anticipation of making an application for an interim allocation of the Guarantee Fund; and

7. The said application for the declaration indicates that the Administration was forced to impose financial hardship on current retirees by reducing their pension payments to the level that the Plan can support;

I PROPOSE TO CONSIDER TO MAKE A DECLARATION, pursuant to section 83 of the *Act*, that the Guarantee Fund applies to the Plan **FOR THE FOLLOWING REASONS:**

1. The funded ratio of the Plan has been estimated to be 62% with an estimated deficiency in wind up assets compared to wind up liabilities of $3,128,000 as of July 7, 1999.
2. The employer, Superior Machine and Tool (Chatham) Limited, was assigned into bankruptcy on July 8, 1999.
3. The trustee in bankruptcy has advised the Administrator that there are no assets available to the trustee from the estate of Superior Machine and Tool (Chatham) Limited for realization.
4. The Administrator advised that it is of the opinion that there are reasonable and probable grounds for concluding that the funding requirements of the *Act* and regulation cannot be satisfied.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act*, if within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

Any notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, Ontario
M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.

DATED at North York, Ontario, this 12th day of September, 2001.

K. David Gordon
Deputy Superintendent, Pension Division
by delegated authority from
Superintendent of Financial Services

[1]NOTE – PURSUANT to section 112 of the *Act*, any notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served or delivered on the seventh day after the day of mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28;

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28, respecting the **Retirement Plan for the Salaried Employees of Superior Machine and Tool (Chatham) Limited, Registration Number 0691642**;

TO: **Morneau Sobeco**
Suite 500
1500 Don Mills Road
Toronto, Ontario
M3B 3K4

Attention: Mr. Al Kiel
Administrator

AND TO: **Superior Machine and Tool (Chatham) Limited**
277 William Street South
Chatham, Ontario
N7M 4T3

Attention: Mr. Mike Fife
Employer

AND TO: **Zwaig Consulting Inc.**
Suite 1560, Exchange Tower
P.O. Box 17, 130 King Street West
Toronto, Ontario
M5X 1J5

Attention: Mr. Jeffrey D. Kerbel
Trustee in Bankruptcy and Interim Receiver and Manager

Notice of Proposal to Make a Declaration

WHEREAS:

1. The Retirement Plan for the Salaried Employees of Superior Machine and Tool (Chatham) Limited, Registration No. 0691642 (the "Plan"), is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "*Act*"); and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the *Act* or the regulations made thereunder; and
3. The Superintendent of Pensions appointed Deloitte & Touche Inc. as the administrator of the Plan on December 22, 1999, and Morneau Sobeco (the "Administrator") is the agent acting for Deloitte & Touche Inc.; and
4. The Administrator had requested from the Superintendent of Financial Services, on September 27, 2000, that an Order be issued to wind up the Plan effective July 7, 1999; and
5. A Notice of Proposal to make an Order to wind up the plan, dated August 29, 2001, effective July 7, 1999, to July 8, 1999, was served on the Administrator on September 6, 2001; and
6. The Administrator filed on July 6, 2001, an application for a declaration that the Guarantee Fund applies to the Plan, in anticipation of making an application for an interim allocation of the Guarantee Fund; and

7. The said application for the declaration indicates that the Administrator was forced to impose financial hardship on current retirees by reducing their pension payments to the level that the Plan can support.

I PROPOSE TO CONSIDER TO MAKE A DECLARATION pursuant to section 83 of the *Act*, that the Guarantee Fund applies to the Plan **FOR THE FOLLOWING REASONS**:

1. The funded ratio of the Plan has been estimated to be 55% with an estimated deficiency in wind up assets compared to wind up liabilities of $3,000,000 as of July 7, 1999.
2. The employer, Superior Machine and Tool (Chatham) Limited, was assigned into bankruptcy on July 8, 1999.
3. The trustee in bankruptcy has advised the Administrator that there are no assets available to the trustee from the estate of Superior Machine and Tool (Chatham) Limited for realization.
4. The Administrator advised that it is of the opinion that there are reasonable and probable grounds for concluding that the funding requirements of the *Act* and regulation cannot be satisfied.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act*, if within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, Ontario
M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.

DATED at North York, Ontario, this 12th day of September, 2001.

K. David Gordon
Deputy Superintendent, Pension Division
by delegated authority from
Superintendent of Financial Services

[1]NOTE – PURSUANT to section 112 of the *Act* any notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "*Act*");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 69 of the *Act* in respect of **The Registered Pension Plan for Employees of Med-Chem Laboratories Limited and Participating Affiliates, Registration Number 372896** (the "Plan");

TO: **Clarica Life Insurance Company**
227 King Street South
P.O. Box 1601
Waterloo, Ontario
N2J 4C5

Attention: Ms. Audrey Humphrey,
Finals Associate
Administrator

AND TO: **Med-Chem Health Care Limited (previously Med-Chem Laboratories Limited and Associated Companies)**
8150 Sheppard Avenue East
Scarborough, Ontario
M1B 5K2

Attention: Ms. Anita Halverson,
Director, Human Resources
Employer

AND TO: **Scarborough Medical Laboratory Services Limited**
8150 Sheppard Avenue East
Scarborough, Ontario
M1B 5K2

Attention: Ms. Anita Halverson,
Director, Human Resources
Employer

Notice of Proposal

I PROPOSE TO MAKE AN ORDER in respect of the Plan under subsection 69(1) of the *Act*.

PROPOSED ORDER:

The Registered Pension Plan for Employees of Med-Chem Laboratories Limited and Participating Affiliates, Registration No. 372896, be wound up in part effective February 1, 1999, in respect of members and former members who were employed by Med-Chem Health Care Limited (previously Med-Chem Laboratories Limited and Associated Companies) and Scarborough Medical Laboratory Services Limited.

REASONS FOR THE ORDER:

1. The participating employers in the Plan are Med-Chem Health Care Limited, MCTU Diagnostics Ltd. and Scarborough Medical Laboratory Services Limited.
2. There was a cessation or suspension of employer contributions to the pension fund of the Plan by Med-Chem Health Care Limited and Scarborough Medical Laboratory Services Limited, pursuant to clause 69(1)(a) of the *Act*.
3. Med-Chem Health Care Limited is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada), R.S.C. 1985, c. B-3, as amended, pursuant to clause 69(1)(c) of the *Act*.
4. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act*, if within thirty (30) days after the Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, Ontario
M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

THE ADMINISTRATOR IS REQUIRED, pursuant to subsection 89(5) of the *Act*, to transmit a copy of this Notice of Proposal to the following persons:

Brewery, General and Professional Workers' Union
238 Jane Street
Toronto, Ontario
M6S 3Z1

Attention: Mr. Cam Nelson, President
Union

PricewaterhouseCoopers Inc.
145 King Street West
Toronto, Ontario
M5H 1V8

Attention: Mr. Robert M.C. Holmes
Senior Vice-President
Trustee in Bankruptcy for Med-Chem Health Care Limited

Goodman Phillips & Vineberg Barristers & Solicitors
250 Yonge Street
Suite 2400
Toronto, Ontario
M5B 2M6

Attention: Ms. Michéle S. Altaras
Solicitors for PricewaterhouseCoopers Inc., Trustee in Bankruptcy

DATED at North York, Ontario, this 27th day of September, 2001.

K. David Gordon
Deputy Superintendent, Pension Division
by delegated authority from
Superintendent of Financial Services

[1]NOTE – PURSUANT to section 112 of the *Act* any notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "*Act*");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 69 of the *Act* in respect of **The Registered Pension Plan for Employees of Med-Chem Laboratories Limited and Participating Affiliates, Registration Number 372896** (the "Plan");

TO: **Clarica Life Insurance Company**
227 King Street South
P.O. Box 1601
Waterloo, Ontario
N2J 4C5

Attention: Ms. Audrey Humphrey,
Finals Associate
Administrator

AND TO: **Med-Chem Health Care Limited (previously Med-Chem Laboratories Limited and Associated Companies)**
8150 Sheppard Avenue East
Scarborough, Ontario
M1B 5K2

Attention: Ms. Anita Halverson,
Director, Human Resources
Employer

AND TO: **MCTU Diagnostics Ltd.**
8150 Sheppard Avenue East
Scarborough, Ontario
M1B 5K2

Attention: Ms. Anita Halverson,
Director, Human Resources
Employer

AND TO: **Scarborough Medical Laboratory Services Limited**
8150 Sheppard Avenue East
Scarborough, Ontario
M1B 5K2

Attention: Ms. Anita Halverson,
Director, Human Resources
Employer

Notice of Proposal

I PROPOSE TO MAKE AN ORDER in respect of the Plan under subsection 69(1) of the *Act*.

PROPOSED ORDER:

The Registered Pension Plan for Employees of Med-Chem Laboratories Limited and Participating Affiliates, Registration No. 372896, be wound up in whole effective June 30, 1999.

REASONS FOR THE ORDER:

1. The participating employers in the Plan are Med-Chem Health Care Limited, MCTU Diagnostics Ltd. and Scarborough Medical Laboratory Services Limited.
2. There was a cessation or suspension of employer contributions to the pension fund, pursuant to clause 69(1)(a) of the *Act*.
3. Med-Chem Health Care Limited is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada), R.S.C. 1985, c. B-3, as amended, pursuant to clause 69(1)(c) of the *Act*.
4. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act*, if within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, Ontario
M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

THE ADMINISTRATOR IS REQUIRED, pursuant to subsection 89(5) of the *Act*, to transmit a copy of this Notice of Proposal to the following persons:

Brewery, General and Professional Workers' Union
238 Jane Street
Toronto, Ontario
M6S 3Z1

Attention: Mr. Cam Nelson, President
Union

PricewaterhouseCoopers Inc.
145 King Street West
Toronto, Ontario
M5H 1V8

Attention: Mr. Robert M.C. Holmes
Senior Vice-President
Trustee in Bankruptcy for Med-Chem Health Care Limited

Goodman Phillips & Vineberg
Barristers & Solicitors
250 Yonge Street
Suite 2400
Toronto, Ontario
M5B 2M6

Attention: Ms. Michéle S. Altaras
Solicitors for PricewaterhouseCoopers Inc., Trustee in Bankruptcy

DATED at North York, Ontario, this 27th day of September, 2001.

K. David Gordon
Deputy Superintendent, Pension Division
by delegated authority from
Superintendent of Financial Services

[1] NOTE – PURSUANT to section 112 of the *Act* any notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "*Act*");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Refuse to Make an Order under sections 69 and 87of the *Act* relating to the **Pension Plan for Employees of Proctor & Redfern Limited, Registration Number 0289579** (the "Plan");

TO: **Earth Tech (Canada) Inc.**
45 Green Belt Drive
Don Mills, Ontario
M3C 3K3

Attention: Stuart Angus
President
Administrator and Employer

Notice of Proposal

I PROPOSE TO REFUSE TO MAKE AN ORDER in respect of the Plan under sections 69 and 87 of the *Act* the terms of which are set out below.

PROPOSED REFUSAL:

1. A refusal to order that the Plan be partially wound up under section 69 of the *Act* with respect to former employees of Proctor & Redfern Limited whose employment was terminated between and including 1994 and 1998;
2. A refusal to order that the former employees whose employment was terminated between and including 1994 and 1998 as well as former employees who had their pension benefits annuitized in 1998 and 1999 be included in the surplus sharing group identified in the Revised Wind Up Report dated December 2000 and a refusal to order that they be entitled to share in the surplus distribution on an equitable basis; and
3. A refusal to order under section 87 of the *Act* that Earth Tech (Canada) Inc. refund to the Plan any funds improperly withdrawn from the Plan to fund its own legal and actuarial costs.

REASONS FOR THE REFUSAL:

1. The Plan was established by Proctor & Redfern Limited ("Proctor & Redfern") in 1962. By agreement dated June 18, 1999, Proctor & Redfern was sold to a company called Earth Tech (Canada) Inc. ("Earth Tech"). Proctor & Redfern was amalgamated with and continued operations as Earth Tech. As a condition of sale, it was required that the Plan be wound up in full effective June 18, 1999.
2. The Proctor & Redfern Board of Directors passed a motion on June 16, 1999, winding up the Plan in full effective June 18, 1999, and the Plan was amended December 1, 1999, to require that all surplus in existence at the date of wind up be distributed to persons who were members of the Plan in the period March 25, 1999 through June 18, 1999, inclusive (the "full wind up group"). A wind up report was submitted on or about December 1999, proposing to distribute surplus to members of the full wind up group only.
3. Subsequently, Proctor & Redfern discontinued all or a significant portion of the business carried on by Proctor & Redfern at its Kingston, Sault Ste. Marie and Thunder Bay locations in 1995 and 1996. On or about October 30, 2000, the Superintendent of Financial Services issued a Notice of Proposal under clause 69(1)(e) of the *Act* to order that the Plan "be wound up in part in respect of those members of the Plan who were employed by Proctor & Redfern ... and

who ceased to be employed by the Employer [Proctor & Redfern] effective between June 9, 1995 and August 1, 1996 as a result of the discontinuance of all or a significant portion of the business carried on by the Employer at its Kingston, Sault Ste. Marie and Thunder Bay Locations" (the "partial wind up group"). During the 30 days following the issuance of the October 30, 2000 Notice of Proposal, and to date, no party has requested a hearing under section 89 of the *Act* in respect of the October 30, 2000 Notice of Proposal.

4. A revised Wind Up Report was filed in December 2000 (the "Revised Wind Up Report") which included the persons in the partial wind up group in a single surplus sharing group with the members of the full wind up group. On or about February 22, 2001, the Superintendent approved the distribution of assets, with the exception of surplus, in accordance with the original wind up report.

5. Certain former employees of Proctor & Redfern ("certain former employees") have requested that the Superintendent issue an order requiring, *inter alia*, the partial wind up of the Plan with respect to former employees whose employment was terminated between and including 1994 and 1998 and that those former employees be included in the proposed surplus sharing group identified in the Revised Wind Up Report and be entitled to share in the distribution of surplus in the same manner as all other members of that surplus sharing group. In support of their request for such an order, these certain former employees allege that the termination of their employment with Proctor & Redfern was the result of a reorganization within the meaning of clause 69(1)(d) of the *Act* that affected all of Proctor & Redfern's locations. Similarly, other former employees (other than these certain former employees) (referred to herein as the "other former employees") have also requested that they be added to the partial wind up and surplus sharing group on the same grounds although their request is not limited to the dates stipulated in the request of the certain former employees.

6 The certain former employees and other former employees requesting the order were not employed at the locations that were the subject of the proposed partial wind up in the October 30, 2000 Notice of Proposal. In addition, some of the certain former employees and other former employees were terminated outside the partial wind up period (June 9, 1995 to August 1, 1996) set out in the October 30, 2000 Notice of Proposal. Therefore, none of these certain former employees or other former employees are entitled to be included in the surplus sharing group identified in the Revised Wind Up Report under the terms of the October 30, 2000 Notice of Proposal.

7. There is no evidence to indicate that during the period 1994 to 1998 and prior, Proctor & Redfern was engaged in a reorganization or discontinuance of its business within the meaning of clause 69(1)(d) of the *Act*. Nor is there any evidence that significant numbers of Plan members ceased employment within the meaning of clause 69(1)(d) of the *Act* during the period 1994 to 1998 and prior. Therefore, there is no basis to conclude that during the period 1994 to 1998 and prior that a significant number of Plan members ceased to be employed as a result of a

discontinuance of all or part of the business or as a result of the reorganization of the business within the meaning of clause 69(1)(d) of the *Act*.

8. Therefore, there is no reason under clause 69(1)(d) of the *Act* to order that the partial wind up previously proposed be extended to any former employees other than the former employees encompassed by the terms of the October 30, 2000 Notice of Proposal. Nor is there any reason to order an additional wind up covering employees terminated during the period 1994 to 1998 and prior. Nor is there any basis to order that any former employees other than the former employees encompassed by the terms of the October 30, 2000 Notice of Proposal be added to the surplus sharing group identified in the Revised Wind Up Report.
9. The certain former employees also requested that those former employees who had their benefits under the Plan annuitized in 1998 and 1999 be included in the proposed surplus sharing group identified in the Revised Wind up Report and be eligible to share in the surplus funds on the same basis as the members of that group.
10. The Plan documents, from the inception of the Plan, indicate that benefits under the Plan are normally to be provided by the purchase of an annuity. Actuarial reports filed indicate that annuitization was used to pay the benefits of former members from time to time during the history of the Plan. Earth Tech has indicated that the purchase of annuities was for the purpose of reducing exposure to indexed benefits and that the purchase was contemplated in advance of the discussions regarding the sale of Proctor & Redfern to Earth Tech and in advance of the contemplation of any wind up of the Plan. The affected former employees were given notice of the intention to purchase annuities in respect of their pension entitlements in May 1998 and the actual purchase of annuities did not occur immediately prior to the sale of Proctor & Redfern or the wind up of the Plan.
11. Therefore, those former employees who had their benefits under the Plan annuitized in 1998 and 1999 should not be included in the proposed surplus sharing group identified in the Revised Wind Up Report.
12. The certain former employees have also requested that the Superintendent issue an order requiring Earth Tech to refund to the Plan any funds improperly withdrawn from the Plan to fund Earth Tech's own legal and actuarial costs. Article 15.04 of the Plan states that "[a]ll reasonable fees and expenses, both internal and external for administrative services, accounting and auditing services, investment and actuarial services, custodial and legal fees under the Plan may be paid or reimbursed (if first paid by the Company) from the Pension Fund." In addition, Article 16.04 (a) specifically empowers the administrator to "consult with and obtain opinions, advice and information from any lawyer, auditor, accountant, Actuary or other expert".
13. There is no evidence that Earth Tech has improperly withdrawn funds from the Plan to pay its own legal and actuarial costs or that the provisions of the Plan in respect of legal and actuarial costs have been contravened. Therefore, there is no reason to order Earth Tech to refund to the Plan any funds improperly withdrawn from the Plan.

14. Such further and other reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to s. 89(6) of the *Act*, if within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, Ontario
M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at North York, Ontario, this 3rd day of October, 2001.

K. David Gordon
Deputy Superintendent, Pension Division
by delegated authority from
Superintendent of Financial Services

cc: **Koskie Minsky**
Barristers & Solicitors
20 Queen St. West
Suite 900, Box 52
Toronto, Ontario
M5H 3R3

Attention: Michael Mazzuca
Solicitors for Certain Former Employees

Blake, Cassels, Graydon LLP
Barristers & Solicitors
Box 25, Commerce Court West
199 Bay Street
Toronto, Ontario
M5L 1A9

Solicitors for the Administrator and Employer

Ron E. Train
1235 Huntingwood Drive, Unit 13
Scarborough, Ontario
M1S 1K7

D.W. Scott
436 Ambrose Street
Thunder Bay, Ontario
P7B 1M6

Don Boissoneault
662 O'Brien Street
North Bay, Ontario
P1B 5W6

Ted Goddard
50 Bryant Road
Markham, Ontario
L3P 5Z2

Delores Forster
1774 Shady Brook Drive
Pickering, Ontario
L1V 3A5

Other Former Employees

[1]NOTE – PURSUANT to section 112 of the *Act* any notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "*Act*");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the *Act* consenting to a payment out of **The Tarmac Canada Inc. Pension Plan for Employees of Tarmac Minerals Canada Who Were Members of the Former Harnden & King Construction (Ontario) Limited Pension Plan, Registration Number 255091**;

TO: **Tarmac Canada Inc.**
80 North Queen St.
Toronto, Ontario
M8Z 5Z6

Attention: Mr. Randy Roe
Vice-President, Finance
Applicant and Employer

Notice of Proposal

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the *Act*, consenting to the payment, out of The Tarmac Canada Inc. Pension Plan for Employees of Tarmac Minerals Who Were Members of the Former Harnden & King Construction (Ontario) Limited Pension Plan, Registration No. 255091 (the "Plan"), to Tarmac Canada Inc. in the amount of $70,957, as at December 15, 1997, less 50% of the expenses, plus 50% of the investment earnings to the date of payment.

I PROPOSE TO MAKE THE ORDER effective only after the Applicant satisfies me that the entitlements of all members, former members and other sharing persons have been settled.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. Tarmac Canada Inc. is the employer as defined in the Plan (the "Employer").
2. The Plan was wound up, effective December 15, 1997.
3. As at December 15, 1997, the surplus in the Plan was estimated at $141,914.
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
5. The application discloses that by written agreement made by the Employer, and 73.33% of the active members and other members (as defined in the application), and 66.67% of the former members and other persons entitled to payments, the surplus in the Plan at the date of payment, after deduction of wind up expenses is to be distributed:
   a) 50% to the Employer; and
   b) 50% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.
6. The Employer has applied, pursuant to section 78 of the *Act*, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 50% of the surplus in the Plan, less 50% of the expenses related to the wind up of the Plan plus 50% of investment earnings.
7. The application appears to comply with section 78 and subsections 79(3)(a) and (b) of the *Act* and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.
8. Such further and other reasons as come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act* if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, Ontario
M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at North York, Ontario, this 5th day of October, 2001.

K. David Gordon
Deputy Superintendent, Pension Division
by delegated authority from
Superintendent of Financial Services

cc: Doug Andrews
Aon Consulting Inc.

[1]NOTE – PURSUANT to section 112 of the Act any notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28;

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28, respecting the **Pension Plan for the Employees of John T. Hepburn, Limited, Registration Number 260356**;

TO: **Arthur Andersen Inc.**
Suite 1050
4 King Street West
Toronto, Ontario
M5H 1B6

Attention: Mr. Lawrence A. Contant
Administrator

AND TO: **John T. Hepburn Limited**
7450 Torbram Road
Mississauga, Ontario
L4T 1G9

Attention: Mr. Robert G. Hepburn, Secretary
Employer

AND TO: **Doane Raymond Limited**
19th Floor, South Tower
Royal Bank Plaza
200 Bay Street, Box 55
Toronto, Ontario
M5J 2P9

Attention: Ms. Julie Savage, Manager
Trustee in Bankruptcy

AND TO: **United Steelworkers of America**
1291 Matheson Boulevard East
Mississauga, Ontario
L4W 1R1

Attention: Ms. Peggy McComb
Union

Notice of Proposal to Make a Declaration

WHEREAS:

1. The Pension Plan for the Employees of John T. Hepburn, Limited, Registration No. 260356 (the "Plan"), is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "*Act*"); and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the *Act* or the regulations made thereunder; and
3. The Superintendent of Pensions appointed Arthur Andersen Inc. as the administrator (the "Administrator") of the Plan on August 19, 1994; and
4. The Plan was wound up effective July 6, 1994, by order of the Superintendent of Pensions;

I PROPOSE TO CONSIDER TO MAKE A DECLARATION, pursuant to section 83 of the *Act*, that the Guarantee Fund applies to the Plan **FOR THE FOLLOWING REASONS**:

1. The funded ratio of the Plan at the wind up date of the Plan, July 6, 1994, was estimated to be 100%.
2. At September 30, 2000, there were net assets of $1,536,700.00, available in the Plan to discharge the remaining liability for benefits amounting to $1,749,900.00.
3. The estimated claim against the Guarantee Fund at September 30, 2000, was $213,200.00.
4. The employer, John T. Hepburn Limited, was placed into bankruptcy effective July 6, 1994.

5. The trustee in bankruptcy for John T. Hepburn Limited has advised the Administrator that there are no funds available from the estate of John T. Hepburn Limited to make payment to the Plan.
6. The Administrator is of the opinion that there are reasonable and probable grounds for concluding that the funding requirements of the *Act* and regulation cannot be satisfied.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act*, if within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

Any notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, Ontario
M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE DECLARATION PROPOSED HEREIN.

DATED at North York, Ontario this 10th day of October, 2001.

K. David Gordon
Deputy Superintendent, Pension Division
by delegated authority from
Superintendent of Financial Services

[1]NOTE – PURSUANT to section 112 of the *Act* any notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "*Act*");

AND IN THE MATTER OF a Proposal by the Deputy Superintendent, Pension Division to make an Order under subsection 78(1) of the *Act* consenting to a payment out of the **Swift Adhesives Salaried Employees Pension Plan, Registration Number 956219**;

TO: **Reichhold Limited**
c/o Reichhold Inc.
P.O. Box 13582
Research Triangle Park
Raleigh Durham, North Carolina
27709-3582
U.S.A.

Attention: Trent Rhyne
Compensation and Benefits Director
Applicant and Employer

Notice of Proposal

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the *Act*, consenting to the payment out of the Swift Adhesives Salaried Employees Pension Plan, Registration No. 956219 (the "Plan"), to Reichhold Limited, as follows:

(a) An amount shall be paid or allocated to the Applicant equal to:

(i) $541,305, the value of the liabilities as determined by the Plan Actuary in consultation with the actuary for the Plan members for early retirement benefits as negotiated and grow-in benefits required to be provided under the *Pension Benefits Act*, R.S.O. 1990, for Ontario members, which pursuant to the Surplus Sharing Settlement Agreement shall be provided to all eligible employees of the Applicant accruing benefits under the Plan at any time in the period from November 13, 1998 through the Plan wind up date (April 30, 2000), regardless of jurisdiction of residence or employment and grow-in benefits as negotiated together with interest thereon from the date as at which each value is determined to the date of payment or allocation to the Application at the rates of interest used to determine the liability as follows:

Interest Rate	Value of Liabilities
6.5% per annum	$355,344
5.0% per annum	$105,809
5.75% per annum	$ 80,152
Total	$541,305

plus

(ii) $2.1 million as at April 30, 2000, together with interest thereon at the rate of 6.5%, being the rate of return used to determine the Plan's liability for transfer values as determined by the Actuary from April 30, 2000, to the date of payment; plus

(iii) 50% of the surplus remaining after making provision for the payments contemplated in (i) and (ii) above together with net earnings or losses thereon (estimated to be, as at April 30, 2000, $3,278,154).

I PROPOSE TO MAKE THE ORDER effective only after the Applicant satisfies me that the entitlements of all members and former members have been settled.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. Reichhold Limited is the employer as defined in the Plan (the "Employer").
2. The Plan was wound up, effective April 30, 2000.

3. As at April 30, 2000, the surplus in the Plan was estimated at $9,197,614.
4. The court has ordered that the Plan provides for payment of surplus to the Employer on the wind up of the Plan in respect of subsection 79(3)(b) of the *Act*.
5. The application discloses that by written agreement made by the Employer, and 94.1% of the active members and other members (as defined in the application) and 79.2% of the former members and other persons entitled to payments, the surplus in the Plan at the date of payment, after deduction of wind up expenses is to be distributed:
   a) 64.4% to the Employer; and
   b) 35.6% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement.
6. The Employer has applied, pursuant to section 78 of the *Act*, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of $541,305 as at April 30, 2000, plus $2.1 million together with interest at the rate of 6.5% from April 30, 2000, to the date of payment plus 50% of the surplus remaining after making provision for the aforementioned payments together with net earnings or losses.
7. The application appears to comply with section 78 and subsection 79(3) of the *Act* and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.
8. Such further and other reasons as come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act* if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

Your written notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, Ontario
M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at North York, Ontario, this 10th day of October, 2001.

K. David Gordon
Deputy Superintendent, Pension Division
by delegated authority from
Superintendent of Financial Services

cc: Kim Ozubko
Blake, Cassels & Graydon LLP

[1] NOTE – PURSUANT to section 112 of the *Act* any notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "*Act*");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the *Act* consenting to a payment out of the **Staff Pension Plan for the Employees of 733907 Ontario Ltd., Registration Number 597245**;

TO: **733907 Ontario Ltd.**
14 Westwin Court
Brampton, Ontario
L6T 4T5

Attention: Mr. Morris Leider
733907 Ontario Ltd.,
President

Notice of Proposal

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the *Act*, consenting to the payment out of the Staff Pension Plan for Employees of 733907 Ontario Ltd., Registration No. 597245 (the "Plan"), to 733907 Ontario Ltd., in the amount of $25,405.78, as at July 31, 2000, adjusted for expenses plus investment earnings thereon to the date of the payment.

I PROPOSE TO MAKE THE ORDER effective only after the Applicant satisfies me that the sole member's entitlement from the plan surplus has been transferred out of the pension plan and paid to the member.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. 733907 Ontario Ltd. is the employer as defined in the Plan.
2. The Plan was wound up, effective January 1, 1997.
3. As at January 1, 1997, the surplus in the Plan was estimated at $35,811.56.
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
5. The application discloses that by written agreement made by the Employer and the sole member, the surplus in the Plan at the date of payment, after deduction of wind up expenses is to be distributed:
   a) 50% to the Employer; and
   b) 50% to the member.
6. The Employer has applied, pursuant to section 78 of the *Act*, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 50% of the surplus in the Plan after adding investment earnings and deducting the expenses related to the wind up of the Plan.
7. The application appears to comply with section 78 and subsection 79 (3)(a) and (b) of the *Act* and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.
8. Such further and other reasons as come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act*, if within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, Ontario
M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at North York, Ontario, this 11th day of October, 2001.

K. David Gordon
Deputy Superintendent, Pension Division
by delegated authority from
Superintendent of Financial Services

cc: Timothy B. Lawrence, F.S.A., F.C.I.A.,
Wright, Mogg & Associates Ltd.

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IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "*Act*");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the *Act* consenting to a payment out of the **Getty Mines Limited Retirement Plan, Registration Number 0915538**;

TO: **Getty Mines International, Inc.**
c/o Stikeman, Elliot
Barristers & Solicitors
5300 Commerce Court West
53rd Floor, P.O. Box 85
Toronto, Ontario
M5L 1B9

Attention: Mr. Sean F. Dunphy
Ms. Jasmine T. Akbarali
Solicitors for the Applicant
Applicant and Employer

Notice of Proposal

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the *Act*, consenting to the payment out of the Getty Mines Limited Retirement Plan, Registration No. 0915538 (the "Plan"), to Getty Mines International Inc. in the amount of approximately $141,000 as at May 29, 2001, adjusted for expenses and investment earnings on the fund to the date of payment.

I PROPOSE TO MAKE THE ORDER effective only after the Applicant satisfies me that surplus entitlements of the 15 former members of the Mines Plan have been paid or otherwise settled in accordance with the Settlement Agreement.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. Getty Mines International Inc. is the employer as defined in the Plan (the "Employer").
2. The Plan was wound up, effective July 7, 1986.
3. As at May 29, 2001, the surplus in the Plan was estimated at approximately $165,000.
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan.
5. The application discloses that, by Court Order obtained on consent by the Employer, the surplus in the Plan at the date of payment, is to be distributed:
   a) approximately $141,000 to the Employer; and
   b) $24,000, less any necessary deductions, to the beneficiaries of the Plan as defined in the Settlement Agreement attached thereto.
6. The Employer has applied, pursuant to section 78 of the *Act*, and clause 8(2) of the Regulation, for consent of the Superintendent of Financial Services to the payment of approximately $141,000 of the surplus in the Plan as at May 29, 2001.
7. The application appears to comply with section 78 and subsection 79(3) (a) and (b) of the *Act* and with clause 8(2) and subsections 28(5), and 28(6) of the Regulation.
8. Such further and other reasons as come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act* if, within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, Ontario
M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at North York, Ontario, this 11th day of October, 2001.

K. David Gordon
Deputy Superintendent, Pension Division
by delegated authority from
Superintendent of Financial Services

cc: Ms. Elizabeth Pillon, Stikeman Elliot

[NOTE – PURSUANT to section 112 of the *Act* any notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

IN THE MATTER OF The *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "*Act*");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the *Act* consenting to a payment out of the **Procter & Gamble Core Pension Plan, Registration Number 681163**;

TO: **Mr. Peter Beca, F.C.I.A.**
Senior Vice President
Aon Consulting Inc.
145 Wellington Street West,
Suite 500
Toronto, Ontario
M5J 1H8

for Procter & Gamble Inc.,
Applicant and Employer

Notice of Proposal

I PROPOSE TO MAKE AN ORDER under s. 78(1) of the *Act*, consenting to the payment out of the Procter & Gamble Core Pension Plan, Registration No. 681163 (the "Plan"), to Procter & Gamble Inc. in the amount of approximately $836,800, as at January 31, 1999, adjusted for all fees and expenses attributable to the partial wind up effective January 29, 1999, resulting from the closure of the Hamilton plant, plus investment earnings to date of payment on all of the surplus attributable to said partial wind up.

I PROPOSE TO MAKE THE ORDER effective only after the Applicant satisfies me that the administrator of the pension plan has provided for the payment of all liabilities of the pension plan, including any enhancements arising from the surplus sharing agreement, to which members, former members and any other persons are entitled on the termination of the pension plan.

I PROPOSE TO MAKE THIS ORDER FOR THE FOLLOWING REASONS:

1. Procter & Gamble Inc. is the employer as defined in the Plan (the "Employer").
2. The Plan was partially wound up, effective January 29, 1999.
3. As at January 31, 1999, the surplus in the Plan was estimated at $1,510,100.
4. The Plan provides for payment of surplus to the Employer on the wind up of the Plan in whole or in part.
5. The application discloses that by written agreement made by the Employer, 96.85% of the active members and 100% of the former members and other persons entitled to payments, the surplus in the Plan at January 31, 1999, is to be distributed:
   a) 44.6% to the beneficiaries of the Plan as defined in the Surplus Distribution Agreement, and
   b) the remaining surplus (55.4%), adjusted for all fees and expenses, plus investment earnings on all of the surplus attributable to attributable to the partial wind up to date of payment, to the Employer.
6. The Employer has applied, pursuant to section 78 of the *Act*, and clause 8(1)(b) of the Regulation, for consent of the Superintendent of Financial Services to the payment of 55.4% of the surplus in the Plan (after adding 100% of investment earnings and deducting 100% of the expenses related to the partial wind up of the Plan.)
7. The application appears to comply with section 78 and subsections 79(3)(a) and (b)

of the *Act* and with clause 8(1)(b) and subsections 28(5), 28(5.1) and 28(6) of the Regulation.

8. Such further and other reasons as come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act*, if within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, Ontario
M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at North York, Ontario, this 11th day of October, 2001.

K. David Gordon
Deputy Superintendent, Pension Division
by delegated authority from
Superintendent of Financial Services

cc: Mr. David J. McKenzie,
Procter & Gamble Inc.

Mr. Paul W. Litner, Osler,
Hoskin & Harcourt LLP

[1]NOTE – PURSUANT to section 112 of the *Act* any notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "*Act*");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to (Refuse to) Make an Order under section 87 of the *Act* relating to the **AFG Industries Ltd. Retirement Plan, Registration Number 290700** (the "Plan");

TO: **AFG Industries Inc.**
Corporate Headquarters
P.O. Box 292
Kingsport, Tennessee
37662
U.S.A.

Attention: Rick Stapleton
Director, Human Resources
Employer and Administrator of the Plan

Notice of Proposal

I PROPOSE TO MAKE AN ORDER in respect of the Plan under section 87 of the *Act*.

PROPOSED ORDER:

An order that the Plan administrator include credited service under the Glaverbel Plan (as defined herein) in the calculation of Ms. Joan Jay's pension benefit under the Plan.

REASONS FOR THE ORDER:

1. Ms. Jay was an employee of Crystal Glass and Plastics Ltd. ("Crystal Glass").
2. On or about January 10, 1974, Crystal Glass was acquired by Glaverbel Canada Limited or a related company (the "Glaverbel Group"). As a result of this acquisition, Ms. Jay became an employee of the Glaverbel Group.
3. The Glaverbel Group provided a contributory pension plan for its regular salaried employees (the "Glaverbel Plan").
4. Membership in the Glaverbel Plan was mandatory for all employees hired after 1969. Employees became eligible to participate in the Glaverbel Plan on the first day of January following completion of one year of service.
5. There is no exception in the Glaverbel Plan or in any amendment to the Plan for individuals who became employees as the result of the acquisition of Crystal Glass. While the Glaverbel Plan contained a provision which permitted the administrator to waive the eligibility requirements referred to in paragraph 4 (i.e., the waiting period), this provision did not operate to permit the administrator to except an employee from membership in the Glaverbel Plan once he or she became eligible. It is therefore reasonable to conclude that Ms. Jay became a member of the Glaverbel Plan upon meeting the eligibility requirements.
6. The Glaverbel Group was subsequently acquired by Ford Glass Limited. In 1983, the assets of the Glaverbel Plan were transferred into the pension plan sponsored by Ford Glass Limited (the "Ford Plan") and the Glaverbel Plan was discontinued. The Ford Plan became the Plan.
7. The benefit formula in the Ford Plan and the Plan recognizes years of credited service under the Glaverbel Plan for purposes of determining the pension benefits of former Glaverbel Group of employees. Accordingly, Ms. Jay is entitled to have her years of credited service under the Glaverbel Plan included in the calculation of her pension benefit.
8. The Plan administrator has failed to include her years of credited service under the

Glaverbel Plan in the calculation of Ms. Jay's pension benefit.

9. Subsection 87(2) of the *Act* allows the Superintendent to make an order if the Superintendent is of the opinion, upon reasonable and probable grounds, that the pension plan or fund is not being administered in accordance with the *Act*, the regulations or the pension plan.
10. Section 19(2) of the *Act* requires the administrator of a pension plan to ensure that the pension plan and the pension fund are administered in accordance with the filed documents in respect of which the Superintendent has issued a certificate of registration.
11. Accordingly, I am of the opinion that in failing to include credited service under the Glaverbel Plan in the calculation of Ms. Jay's pension benefit, the Plan administrator is not administering the Plan in compliance with the requirements of the *Act* and the filed Plan documents.
12. Such further reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal"), pursuant to subsection 89(6) of the *Act*, if within thirty (30) days after this Notice of Proposal is served on you, you deliver to the Tribunal a written notice that you require a hearing.[1]

Any written notice requiring a hearing shall be delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
North York, Ontario
M2N 6L9

Attention: The Registrar

IF YOU DO NOT DELIVER TO THE TRIBUNAL, WITHIN THIRTY (30) DAYS FROM THE DATE THIS NOTICE OF PROPOSAL IS SERVED ON YOU, A WRITTEN NOTICE THAT YOU REQUIRE A HEARING, I MAY MAKE THE ORDER PROPOSED HEREIN.

DATED at North York, Ontario, this 16th day of October, 2001.

K. David Gordon
Deputy Superintendent, Pension Division
by delegated authority from
Superintendent of Financial Services

[1]NOTE – PURSUANT to section 112 of the *Act* any notice, Order or other document is sufficiently given, served, or delivered if delivered personally or sent by first class mail and any document sent by first class mail shall be deemed to be given, served, or delivered on the seventh day after mailing.

Orders that Pension Plans be Wound Up

IN THE MATTER OF the *Pension Benefits Act* R.S.O. 1990, c. P.8, as amended (the "*Act*");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 69 of the *Pension Benefits Act*, respecting **The Pension Plan for the Employees of Tee-Comm Electronics Inc., Registration Number 0905075**;

TO: **The Manufacturers' Life Insurance Company**
500 King Street North,
Waterloo, Ontario
N2J 4C6

Attention: Ms. Karen Osborne
Discontinuance Underwriter
Administrator of The Pension Plan for the Employees of Tee-Comm Electronics Inc.

AND TO: **Tee-Comm Electronics Inc.**
775 Main Street East,
Milton, Ontario
L9T 3Z3

Attention: Reg Tiessen,
Director of Finance
Employer

Order

ON the 9th day of May 2001, former Superintendent of Financial Services issued a Notice of Proposal to make an Order (the "Notice of Proposal") to the Employer and to the Administrator of the Plan, pursuant to subsection 69(1) of the *Act*, that The Pension Plan for the Employees of Tee-Comm Electronics Inc., Registration No. 0905075, be wholly wound up effective June 30, 1997.

NO REQUEST for a hearing has been received by the Financial Services Tribunal in connection with this matter.

IT IS THEREFORE ORDERED that The Pension Plan for the Employees of Tee-Comm Electronics Inc., Registration No. 0905075 (the "Plan"), be wholly wound up effective June 30, 1997.

THE REASONS FOR THIS ORDER:

1. There has been a cessation or suspension of employer contributions to the pension fund;
2. The employer is bankrupt within the meaning of the *Bankruptcy Act*;
3. A significant number of members have ceased to be employed by the employer as the result of the discontinuance of the business of the employer.
4. All of the business of the employer has been discontinued.

THE ADMINISTRATOR IS REQUIRED, pursuant to subsection 69(2) of the *Act*, to give notice of this Order to the all the members and former members of the Plan and to the following persons:

Ernst & Young Inc.,
P.O. Box 251
222 Bay Street,
Toronto, Ontario
M5K 1J7

Attention: Sharon Hamilton
Receiver for Tee-Comm Electronics Inc.

KPMG Inc.
Suite 3300, Commerce Court West
P.O. Box 31, Stn. Commerce Court
Toronto, Ontario
M5L 1B2

Attention: Jack Richards, Vice President
Trustee In Bankruptcy for
Tee-Comm Electronics

DATED at North York, Ontario, this 31st day of July, 2001.

K. David Gordon
Deputy Superintendent, Pension Division
by delegated authority from
Superintendent of Financial Services

IN THE MATTER OF the *Pension Benefits Act* R.S.O. 1990, c. P.8, as amended;

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order pursuant to section 69 of the *Pension Benefits Act*, respecting the **Employee Retirement Plan for the Employees of Murphy Distributing Ltd., Registration Number 512137**;

TO: **London Life Insurance Company**
255 Dufferin Avenue
London, Ontario
N6A 4K1

Attention: Nancy Galpin
Customer Service Specialist
Administrator of the Employee Retirement Plan for the Employees of Murphy Distributing Ltd., Registration Number 512137 (the "Administrator")

AND TO: **Murphy Distributing Ltd.**
P.O. Box 427
37 Woodyatt Drive
Brantford, Ontario
N3T 5M3

Attention: Cameron Manning
Chief Financial Officer
Employer

Order

ON the 29th day of May 2001, the Superintendent of Financial Services issued a Notice of Proposal to make an Order (the "Notice of Proposal") to the Employer and to the Administrator pursuant to subsection 69(1) of the *Act*, that the Employee Retirement Plan for the Employees of Murphy Distributing Ltd., Registration No. 512137 be wholly wound up effective November 26, 1999.

NO REQUEST for a hearing has been received by the Financial Services Tribunal in connection with this matter.

IT IS THEREFORE ORDERED that the Employee Retirement Plan for the Employees of Murphy Distributing Ltd., Registration No. 512137 (the "Plan"), be wholly wound up effective November 26, 1997.

THE REASONS FOR THIS ORDER:

1. There has been a cessation or suspension of employer contributions to the pension fund;
2. The employer failed to make contributions to the pension fund as required by the *Act* or the regulations made under the *Act*;
3. A significant number of members of the Plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer.

THE ADMINISTRATOR IS REQUIRED, pursuant to subsection 69(2) of the *Act*, to give notice of this Order to the following persons:

Cavalluzzo Hayes Shilton McIntyre & Cornish
43 Madison Avenue
Toronto, Ontario
M5R 2S2

Attention: Elizabeth Shilton
Counsel
Legal Representative for the Retail Wholesale Canada Division of the C.A.W., Local 414

Schonfeld Inc.
390 Bay Street, Suite 2400
Toronto, Ontario
M5H 2Y2

Attention: S. Harland Schonfeld, CA, CIP
Trustee in Bankruptcy for
Murphy Distributing Ltd.

DATED at North York, Ontario, this 16th day of August, 2001.

Tom Golfetto, Director (Acting)
Pension Plans Branch,
by delegated authority from

K. David Gordon,
Deputy Superintendent, Pension Division
by delegated authority from
Superintendent of Financial Services

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "*Act*");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order, pursuant to section 69 of the *Act*, respecting the **Royal Oak Mines Inc. Pension Plan for Timmins Salaried Employees, Registration Number 937458** (the "Plan");

TO: **Deloitte & Touche Inc.**
by its agent
Morneau Sobeco
1500 Don Mills Road, Suite 500
Toronto, Ontario
M3B 3K4

Attention: Julie Seewald
Senior Analyst
Administrator

AND TO: **Royal Oak Mines Inc.**
P.O. Box 2010
Timmins, Ontario
P4N 7X7

Attention: Rachel A. Pineault
Pension Administrator
Employer

Order

ON the 18th day of June 2001, the Superintendent of Financial Services issued to the Employer and to the Administrator of the Plan, pursuant to subsection 69(1) of the *Act*, a Notice of Proposal to make an Order (the "Notice of Proposal"), that the Plan be wholly wound up effective between September 1, 1999 and February 14, 2000.

NO REQUEST for a hearing from the Employer or from the Administrator has been received by the Financial Services Tribunal in connection with this matter.

IT IS THEREFORE ORDERED that the Royal Oak Mines Inc. Pension Plan for Timmins Salaried Employees, Registration No. 937458, be wholly wound up effective between September 1, 1999 and February 14, 2000.

THE REASONS FOR THIS ORDER:

1. There was a cessation or suspension of employer contributions to the pension fund, within the meaning of clause 69(1)(a) of the *Act*.
2. The employer failed to make contributions to the pension fund as required by the *Act* or the regulations within the meaning of clause 69(1)(b) of the *Act*.
3. A significant number of members of the pension plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer within the meaning of clause 69(1)(d) of the *Act*.
4. All or a significant portion of the business carried on by the employer at a specific location was discontinued within the meaning of clause 69(1)(e) of the *Act*.

THE ADMINISTRATOR IS REQUIRED, pursuant to subsection 69(2) of the *Act*, to give notice of this Order to the following persons:

PricewaterhouseCoopers Inc.
145 King Street West
18th Floor,
Toronto, Ontario
M5H 1V8

Attention: Jim Reive
Sr. Associate, Financial Advisory Services
Interim Receiver for Royal Oak Mines Inc.

DATED at North York, Ontario, this 20th day of August, 2001.

K. David Gordon
Deputy Superintendent, Pension Division
by delegated authority from
Superintendent of Financial Services

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "*Act*");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to Make an Order, pursuant to section 69 of the *Act*, respecting the **Royal Oak Mines Inc. Pension Plan for Timmins Hourly Employees, Registration Number 937466** (the "Plan");

TO: **Deloitte & Touche Inc.**
by its agent
Morneau Sobeco
1500 Don Mills Road, Suite 500
Toronto, Ontario
M3B 3K4

Attention: Julie Seewald
Senior Analyst
Administrator

AND TO: **Royal Oak Mines Inc.**
P.O. Box 2010
Timmins, Ontario
P4N 7X7

Attention: Rachel A. Pineault
Pension Administrator
Employer

Order

ON the 18th day of June 2001, the Superintendent of Financial Services issued to the Employer and to the Administrator of the Plan, pursuant to subsection 69(1) of the *Act*, a Notice of Proposal to make an Order (the "Notice of Proposal") that the Plan be wholly wound up effective between September 20, 1999 and December 23, 1999.

NO REQUEST for a hearing from the Employer or the Administrator has been received by the Financial Services Tribunal in connection with this matter.

IT IS THEREFORE ORDERED that the Royal Oak Mines Inc. Pension Plan for Timmins Hourly Employees, Registration No. 937466, be wholly wound up effective between September 20, 1999 and December 23, 1999.

THE REASONS FOR THIS ORDER:

1. There was a cessation or suspension of employer contributions to the pension fund, within the meaning of clause 69(1)(a) of the *Act*.
2. The employer failed to make contributions to the pension fund as required by the *Act* or the regulations within the meaning of clause 69(1)(b) of the *Act*.
3. A significant number of members of the pension plan ceased to be employed by the employer as a result of the discontinuance of all or part of the business of the employer or as a result of the reorganization of the business of the employer within the meaning of clause 69(1)(d) of the *Act*.
4. All or a significant portion of the business carried on by the employer at a specific location was discontinued within the meaning of clause 69(1)(e) of the *Act*.

THE ADMINISTRATOR IS REQUIRED, pursuant to subsection 69(2) of the *Act*, to give notice of this Order to the following persons:

Sack Goldblatt Mitchell
Barristers & Solicitors
20 Dundas Street West
Suite 1130, P.O. Box 180
Toronto, Ontario
M5G 2G8

Attention: Michael Kainer
Legal Representative for the Union, the United Steelworkers of America

PricewaterhouseCoopers Inc.
145 King Street West
18th Floor,
Toronto, Ontario
M5H 1V8

Attention: Jim Reive
Sr. Associate, Financial
Advisory Services
Interim Receiver for Royal Oak Mines Inc.

DATED at North York, Ontario, this 20th day of August, 2001.

K. David Gordon
Deputy Superintendent, Pension Division
by delegated authority from
Superintendent of Financial Services

Orders that a Registration be Revoked

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "*Act*");

AND IN THE MATTER OF a Proposal of the Superintendent of Financial Services to revoke the registration of **Régime de Retraite des Employés et Membres de Canadian Corporation Creation Center, Registration Number 1062363** (the "Plan"), pursuant to section 18 of the *Act*;

TO: **Fiducie du Régime de Retraite des Employés et Membres de Canadian Corporation Creation Center**

Attention: Michel Rolland
Designated Trust Administrator
40 Place du Commerce
P.O. Box 63029
Verdun (Nuns Island), Québec
H3E 1V6

Éric Ferron
Trustee
3485 des Érables
Montreal, Québec
H2K 3V6

Michel Dion
Trustee
450 Laurier Avenue
Québec City, Québec
G1R 2L2

Guy Patrick Léveillé
Trustee
1009 Émile Nelligan
Boucherville, Québec
J4B 5J1

Named Administrator

Order

ON August 10, 2001, the Superintendent of Financial Services issued a Notice of Proposal pursuant to subsection 18(1) of the *Act* to the named administrator to revoke the registration of the Régime de Retraite des Employés et Membres de Canadian Corporation Creation Center, Registration No. 1062363 (the "Plan").

NO REQUEST for a hearing has been delivered to the Financial Services Tribunal within the time prescribed by subsection 89(6) of the *Act*.

IT IS THEREFORE ORDERED that the registration of the Régime de Retraite des Employés et Membres de Canadian Corporation Creation Center, Registration No. 1062363 (the "Plan") be revoked for the following reasons:

Named Administrator

1. The application for registration of the Plan indicates that the Canadian Corporation Creation Center ("CCCC") is the employer for the Plan. The text for the Plan states that the administrator for the Plan is the Fiducie du Régime de Retraite des Employés et Membres de Canadian Corporation Creation Center (Pension Trust Fund of the Employees and Members of Canadian Corporation Creation Center (the "Pension Trust Fund"). The Trust Agreement for the Plan dated June 21, 2000, states that Michel Dion, Éric Ferron and Guy Patrick Léveillé are trustees. Michel Rolland is the Designated Trust Administrator.
2. Section 8 of the *Act* provides an exhaustive list of those entities who are eligible to act as administrators of a pension plan under the *Act*. Section 8 does not permit a pension trust fund to act as an administrator of

a single employer pension plan. The Plan purports to be a single employer plan. Therefore, the Pension Trust Fund is not eligible to act as the administrator of the Plan.

Missing Information in the Plan Documents

3. Subsection 10(1) of the *Act* requires that the pension plan set out certain prescribed information. The Plan does not set out the following information in contravention of the following subclauses of section 10(1):
   a. The requirements for entitlement to any pension benefit or ancillary benefit (subclause 5);
   b. The mechanism for establishing and maintaining the pension fund (subclause 10);
   c. The treatment of surplus during the continuation of the Plan and on windup of the Plan (subclause 11); and
   d. The method of allocation of the assets of the Plan on windup (subclause 13).

Declaration

4. Clause 9(2)(e.1) of the *Act* states that an application for registration of a pension plan shall be made by filing, *inter alia*, a "certification in a form approved by the Superintendent and signed by the applicant in which the applicant attests that the pension plan complies with [the] *Act* and regulations." In the application for registration of the Plan, the named administrator attested that:
   a. the documents that create and support the Plan complied with the *Act* and regulations; and
   b. that the named administrator was aware that the obligation to ensure that the documents filed comply with the *Act* and regulations is the responsibility of the administrator and that this obligation was fulfiled.
5. The named administrator has contravened clause 9(2)(e.1) of the *Act* in that the attestation provided in the application for registration was false because the documents that create and support the Plan do not comply with the *Act* as set out above.

Members of the Pension Plan

6. Sections 27 and 28 of the Plan state that only employees of an employer that belongs to the Plan are eligible to participate in the Plan. Section 1 of the *Act* defines an employer as a "the person or persons from whom or the organization from which the member or former member receives or received remuneration to which the pension plan is related."
7. The Superintendent has information which indicates that the Plan is accepting transfers of funds from locked-in retirement accounts or other similar prescribed retirement savings arrangements from individuals who do not receive remuneration from an employer that belongs to the Plan. Therefore, such persons are not employees, within the meaning of section 1 of the *Act*, of an employer that belongs to the Plan. The Plan's acceptance of such transfers contravenes the terms of the Plan.
8. Clause 19(3)(a) of the *Act* states that the administrator of a pension plan shall ensure that the pension plan and pension fund are administered in accordance with the "filed documents in respect of which the Superintendent has issued an acknowledgement of application for registration or a certificate of registration". The acceptance of fund transfers in respect of individuals

who are not employees of an employer that belongs to the Plan is a contravention of section 27 and 28 of the Plan and, therefore, constitutes a contravention of clause 19(3)(a) of the *Act*.

9. The transfer of funds from locked-in retirement accounts or other similar prescribed retirement savings arrangements in respect of account holders who are not members of the Plan constitutes a commutation or surrender of a prescribed savings arrangement contrary to section 67 of the *Act* because such funds are not capable of being commuted or surrendered (subject to certain exceptions which do not apply in this case).

Transfer of Funds from the Plan

10. Subsection 22(1) of the *Act* states that "the administrator of a pension plan shall exercise the care, diligence and skill required in the administration and investment of the pension fund that a person of ordinary prudence would exercise in dealing with the property of another person." Subsection 22(4) states that an administrator "shall not knowingly permit the administrator's interest to conflict with the administrator's duties and powers in respect of the pension fund."

11. The Superintendent has information that indicates that funds from the pension fund in respect of the Plan have been transferred from the pension fund to bank accounts held by companies named National Business Investment In Trust Inc. ("NBI In Trust"), National Business Investment Canada Inc. ("NBI Canada") and/or CCCC (the employer under the application for registration). In filings with the Companies Branch of the Ontario Ministry of Consumer and Commercial Relations, Michel Rolland, Designated Trust Administrator for the Pension Trust Fund, is listed as the administrator for NBI In Trust. In banking records, Michel Rolland is listed as the "owner/signing officer" for NBI In Trust and Michel Rolland and Michel Dion are listed as authorized representatives for NBI Canada.

12. In transferring or allowing the transfer of funds from the pension fund to NBI In Trust, NBI Canada and/or CCCC bank accounts, the Pension Trust Fund as the named administrator has permitted the use or diversion of funds for purposes other than the purpose of the Plan in contravention of the trust agreement and subsection 22(1) of the *Act*.

13. In addition, the Pension Trust Fund has contravened subsection 22(4) of the *Act* because it has knowingly permitted its own interest to conflict with its duties and powers in respect of the pension fund in that Michel Rolland is an officer of NBI In Trust and Michel Rolland and Michel Dion are authorized representatives of NBI Canada. Lastly, funds have been transferred from the pension fund to accounts held by CCCC, which contravenes subsection 78(1) of the *Act*. Subsection 78(1) of the *Act* states that no money may be paid out of a pension fund to the employer without the prior consent of the Superintendent.

Investments

14. Section 62 of the *Act* states that the investments to be made with the assets of the pension fund shall be selected in accordance with the criteria set out in the *Act* and regulations. Section 79 of the Regulation states that assets of a pension plan shall be invested in accordance with

the federal investment regulations. Clause 6(1)(b)(i) of the *Pension Benefits Standards Regulations*, 1985, SOR/87-19 to the *Pension Benefits Standards Act, 1985*, R.S.C. 1985, c. 32 as amended, states that the moneys of the pension fund are to be invested in a name that clearly indicates that the investment is held in trust for the plan or in the name of a financial institution or The Canadian Depository for Securities Limited in accordance with a trust or custodial agreement that clearly indicates that the investment is held for the plan.

15. The moneys of the pension fund are not being invested in trust for the Plan nor are they being held in the name of a financial institution and/or The Canadian Depository for Securities Limited in accordance with a trust or custodial agreement that clearly indicates that the investment is held for the Plan. The named administrator has, therefore, failed to select the investments for the pension fund in accordance with the criteria set out in the *Act* and regulations in contravention of section 62 and subsection 22(1) of the *Act* and section 79 of the Regulation.

Assignments of Locked In Accounts

16. Section 65 of the *Act* states that every transaction that purports to assign, charge, anticipate or give as security money payable under a pension plan or transferred from a pension fund is void. The Superintendent has information that indicates that the funds transferred to the pension fund in respect of the Plan from locked in retirement accounts or other prescribed retirement arrangements have been assigned, charged, anticipated or given as security in favour of NBI In Trust in return for the extension of a loan from NBI In Trust to the holder of the prescribed retirement arrangement. Such transactions are unlawful and void pursuant to section 65 of the *Act*. The named administrator has accepted the transfer of funds from locked in retirement accounts or other prescribed retirement arrangements which funds have been assigned, charged, anticipated or given as security in contravention of section 65 of the *Act*.

Annual Filings

17. Subsection 20(1) of the *Act* states that the administrator "shall file each year an annual information return in respect of the pension plan ... and shall pay the filing fee established by the Minister." Subsection 20(2) of the *Act* states that the administrator "shall file additional reports at the times and containing the information prescribed by the regulations."

18. Subsection 18(1) of Regulation 909, R.R.O. 1990, as amended (the "Regulation") states that the administrator shall file the annual information return not later than six months after the end of the fiscal year of the plan in the case of a defined contribution plan. Subsections 76(1) and (2) of the Regulation state that the administrator shall file financial statements for the pension plan or fund as at the plan's fiscal year end and if at the fiscal year end the plan has $3,000,000 or more in assets, the administrator shall file an auditor's report respecting the financial statements. Subsection 76(4) of the Regulation states that the financial statement and auditor's report shall be filed within six months after each fiscal year end for the plan.

19. The Plan is a defined contribution pension

plan. The fiscal year end for the Plan is December 31. No annual information return, financial statements or auditor's report (if required) have been filed by the Pension Trust Fund to date in contravention of section 20 of the *Act* and subsections 18(1), 76(1), 76(2) and 76(4) of the Regulation.

Information Requested by the Superintendent

20. Subsection 98(1) of the *Act* states that "[t]he Superintendent may require an employer, an administrator or any other person to supply the Superintendent such information ... for the purpose of ascertaining whether or not [the] *Act* and the regulations are being complied with". The Superintendent has requested certain information regarding the Plan pursuant to section 98 of the *Act*. Subsection 98(2) of the *Act* stipulates that the person to whom a request is made under subsection 98(1) of the *Act* must comply with the request within the time specified by the Superintendent. To date, the named administrator or other parties have not adequately responded to the Superintendent's request. The named administrator, in failing to respond adequately to a request for information pursuant to section 98 of the *Act*, has failed to administer the plan in accordance with the *Act*.

Conclusion

21. Clause 18(1)(b) of the *Act* states that the Superintendent may "revoke the registration of a pension plan that does not comply with [the] *Act* and the regulations". The Superintendent proposes to revoke the registration of the Plan pursuant to clause 18(1)(b) of the *Act* for the following reasons:

    a. The named administrator of the Plan, the Pension Trust Fund, is not eligible to act as the administrator of the Plan under section 8 of the *Act*; and

    b. The documents that create and support the Plan do not set out the information specified in paragraph 3 above in contravention of section 10 of the *Act*.

22. Clause 18(1)(c) of the *Act* states that the Superintendent may "revoke the registration of a pension plan that is not being administered in accordance with [the] *Act* and the regulations". The Superintendent proposes to revoke the registration of the Plan pursuant to clause 18(1)(c) of the *Act* for the following reasons:

    a. The named administrator has provided a false attestation that the plan complies with the *Act* and regulations in contravention of clause 9(2)(e.1) of the *Act*;

    b. The named administrator is accepting transfers of funds from persons who are not eligible to participate in the Plan in contravention of the Plan and, hence, in contravention of clause 19(3)(a) of the *Act*;

    c. The named administrator is accepting transfers from locked in retirement accounts or other prescribed retirement arrangements which transfers constitute a commutation or surrender of a prescribed retirement arrangement in contravention of section 67 of the *Act*;

    d. The named administrator has not exercised the care, diligence and skill that a person of ordinary prudence would exercise in dealing with the property of another person because it transferred or permitted the transfer of funds from the pension fund to NBI In Trust, NBI

Canada and/or CCCC in contravention of subsection 22(1) of the *Act*;

e. The named administrator has knowingly permitted its own interest to conflict with its duties and powers in respect of the pension fund by transferring or permitting the transfer of funds from the pension fund to NBI In Trust, NBI Canada and/or CCCC in contravention of subsection 22(4) of the *Act*;

f. The named administrator has failed to select the investments for the pension fund in accordance with the *Act* and regulations in contravention of section 62 and subsection 22(1) of the *Act* and section 79 of the Regulation;

g. The named administrator has accepted the transfer of funds from locked in retirement accounts or other prescribed retirement arrangements which funds have been assigned, charged, anticipated or given as security in contravention of section 65 of the *Act*;

h. The named administrator has failed to file the annual information return, financial statements and auditor's report (if required) within the prescribed time limits in contravention of section 20 of the *Act* and subsections 18(1), 76(1), 76(2) and 76(4) of the Regulation; and

i. The named administrator failed to adequately respond to the request by the Superintendent to provide information in contravention of section 98 of the *Act*.

23. Such further and other reasons as may come to my attention.

DATED at North York, Ontario, this 28th day of September, 2001.

Tom Golfetto, Director (Acting)
Pension Plans Branch,
by delegated authority from
K. David Gordon,
Deputy Superintendent, Pension Division
by delegated authority from
Superintendent of Financial Services

Consents to Payments of Surplus out of Wound Up Pension Plans

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "*Act*");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(4) of the *Act* consenting to a payment out of **The Retirement Benefit Pension Plan for Members of Local 1804-I.A.M. of the Weatherhead Plant of Dana Canada Inc., Registration Number 0311845**;

TO: **Dana Canada Inc.**
P.O. Box 3029
St. Catharines, Ontario
L2R 7K9

Attention: William A. Jocsak
Director, Benefits Administration
Applicant and Employer

Consent

ON or about July 4, 2001, the Superintendent of Financial Services caused to be served on Dana Canada Inc. a Notice of Proposal dated June 28, 2001, to consent, pursuant to subsection 78(4) of the *Act*, to payment out of The Retirement Benefit Pension Plan for Members of Local 1804-I.A.M. of the Weatherhead Plant of Dana Canada Inc., Registration No. 0311845, to Dana Canada Inc., in the amount of $13,193.78.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the *Act*.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of The Retirement Benefit Pension Plan for Members of Local 1804-I.A.M. of the Weatherhead Plant of Dana Canada Inc., Registration No. 0311845, of $13,193.78 to Dana Canada Inc.

DATED at North York, Ontario, this 3rd day of August, 2001.

Tom Golfetto, Director (Acting)
Pension Plans Branch,
by delegated authority from
K. David Gordon,
Deputy Superintendent, Pension Division
by delegated authority from
Superintendent of Financial Services

cc: Waheda Alli, The Standard Life Assurance Company

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "*Act*");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the *Act* consenting to a payment out of the **Pension Plan for Employees of C.J. Duguid Flooring (Ontario) Limited, Registration Number 0481457**;

TO: **C.J. Duguid Flooring (Ontario) Limited**
317 Don Park Road
Markham, Ontario
L3R 1C2

Attention: John Duguid
President
Applicant and Employer

Consent

ON or about May 23, 2001, the Superintendent of Financial Services caused to be served on C.J. Duguid Flooring (Ontario) Limited a Notice of Proposal dated May 22, 2001, to consent, pursuant to subsection 78(1) of the *Act*, to payment out of the Pension Plan for Employees of C.J. Duguid Flooring (Ontario) Limited, Registration No. 0481457 (the "Plan"), to C.J. Duguid Flooring (Ontario) Limited in the amount of $247,451 as at December 31, 1999, adjusted for investment earnings and losses thereon and expenses to the date of payment.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the *Act*.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the Pension Plan for Employees of C.J. Duguid Flooring (Ontario) Limited, Registration No. 0481457, of $247,451 as at December 31, 1999, adjusted for investment earnings and losses thereon and expenses to the date of payment to C.J. Duguid Flooring (Ontario) Limited.

DATED at North York, Ontario, this 13th day of August, 2001.

Tom Golfetto, Director (Acting)
Pension Plans Branch,
by delegated authority from
K. David Gordon,
Deputy Superintendent, Pension Division
by delegated authority from
Superintendent of Financial Services

cc: Donna Wolfe, Cowan Wright Limited
Timothy B. Lawrence, Cowan Wright Limited

IN THE MATTER OF The *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "*Act*");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the *Act* consenting to a payment out of the **Pension Plan for Locally Engaged Employees of the New Zealand Government in Canada, Registration Number 338970**;

TO: **Her Majesty The Queen in Right of New Zealand**
New Zealand High Commission
Suite 727, 99 Bank Street
Ottawa, Ontario
K1P 6G3

Attention: Wade Armstrong
High Commissioner
Applicant and Employer

Consent

ON or about July 6, 2001, the Superintendent of Financial Services caused to be served on Her Majesty The Queen in Right of New Zealand a Notice of Proposal dated June 26, 2001, to consent, pursuant to subsection 78(1) of the *Act*, to payment out of the Pension Plan for Locally Engaged Employees of the New Zealand Government in Canada, Registration No. 338970, to Her Majesty the Queen in Right of New Zealand in the amount of $544,701, as at May 1, 2000, adjusted for investment earnings thereon to the date of payment and adjusted for legal, actuarial and administrative expenses.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the *Act*.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the Pension Plan for the Locally Engaged Employees of the New Zealand Government in Canada, Registration No. 338970, of $544,701 as at May 1, 2000, adjusted for investment earnings thereon to the date of payment and adjusted for legal, actuarial and administrative expenses to Her Majesty the Queen in Right of New Zealand.

THIS CONSENT IS EFFECTIVE ONLY AFTER the Applicant satisfies me that all benefits, benefit enhancements (including benefit enhancements pursuant to the Surplus Distribution Agreement defined in paragraph 5) and any other payment to which the members, former members and any other persons entitled to such payments have been paid, purchased, or otherwise provided for.

DATED at North York, Ontario, this 24th day of August, 2001.

K. David Gordon
Deputy Superintendent, Pension Division
by delegated authority from
Superintendent of Financial Services

cc: Dany Mathieu, Hicks Morley Hamilton Stewart Sorie LLP
Rosemary Patterson, New Zealand High Commission

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "*Act*");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the *Act* consenting to a payment out of **The Pension Plan for Non-Unionized Salaried Employees of Libbey Canada Inc., Registration Number 1001130**;

TO: **Mr. Frederick J. Thompson, F.S.A., F.C.I.A.**
Thompson Actuarial Limited
87 Wolverleigh Blvd.
Toronto, Ontario
M4J 1R8

Actuary for the Applicant and Employer

Consent

ON or about July 31, 2001, the Superintendent of Financial Services caused to be served on Libbey Canada Inc. a Notice of Proposal dated July 31, 2001, to consent, pursuant to subsection 78(1) of the *Act*, to payment out of The Pension Plan for Non-Unionized Salaried Employees of Libbey Canada Inc., Registration No. 1001130 (the "Plan"), to Libbey Canada Inc. in the amount of approximately $358,429 as at December 31, 2000, plus investment earnings thereon to the date of payment.

NO Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the *Act*.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of The Pension Plan for Non-Unionized Salaried Employees of Libbey Canada Inc., Registration No. 1001130, of approximately $358,429 as at December 31, 2000, plus investment earnings thereon to the date of payment to Libbey Canada Inc.

THIS CONSENT IS EFFECTIVE ONLY AFTER the Applicant satisfies me that the administrator of the pension plan has paid out all benefits and other payments, including any enhancements arising from the surplus sharing agreement, to which members, former members and any other persons are entitled on the partial termination of the pension plan effective May 31, 1999.

DATED at North York, Ontario, this 27th day of August, 2001.

K. David Gordon
Deputy Superintendent
Pension Division
Financial Services Commission of Ontario

cc: Nazi Irani, Libbey Canada Inc.

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "*Act*");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make an Order under subsection 78(1) of the *Act* consenting to a payment out of the **Swift Adhesives Salaried Employees Pension Plan, Registration No. 956219**;

TO: **Reichhold Limited**
c/o Reichhold Inc.
P.O. Box 13582
Research Triangle Park
Raleigh Durham,
North Carolina
27709-3582
U.S.A.

Attention: Trent Rhyne
Compensation and Benefits
Director
Applicant

Consent

ON or about August 3, 2001, the Superintendent of Financial Services caused to be served on Reichhold Limited a Notice of Proposal dated August 3, 2001, to consent, pursuant to subsection 78(1) of the *Act*, to payment out of the Swift Adhesives Salaried Employees Pension Plan, Registration No. 956219 (the "Plan"), to Reichhold Limited, as follows:

(a) An amount shall be paid or allocated to the Applicant equal to:

(i) $541,305, the value of the liabilities as determined by the Plan Actuary in consultation with the actuary for the Plan members for early retirement benefits as negotiated and grow-in benefits required to be provided under the *Pension Benefits Act*, R.S.O. 1990, for Ontario members, which pursuant to the Surplus Sharing Settlement Agreement shall be provided to all eligible employees of the Applicant accruing benefits under the Plan at any time in the period from November 13, 1998, through the Plan wind up date (April 30, 2000), regardless of jurisdiction of residence or employment and grow-in benefits as negotiated together with interest thereon from the date as at which each value is determined to the date of payment or allocation to the Applicant at the rates of interest used to determine the liability as follows:

Interest Rate	**Value of Liabilities**
6.5% per annum	$355,344
5.0% per annum	$105,809
5.75% per annum	$ 80,152
Total	$541,305

plus

(ii) $2.1 million as at April 30, 2000, together with interest thereon at the rate of 6.5%, being the rate of return used to determine the Plan's liability for transfer values as determined by the Actuary from April 30, 2000, to the date of payment; plus

(iii) 50% of the surplus remaining after making provision for the payments contemplated in (i) and (ii) above together with net earnings or losses thereon (estimated to be, as at April 30, 2000, $3,278,154).

NO Notice requiring a hearing was delivered to the Financial Services Tribunal by the Applicant or any other party within the time prescribed by subsection 89(6) of the *Act*.

THE SUPERINTENDENT OF FINANCIAL SERVICES THEREFORE CONSENTS to the payment out of the Swift Adhesives Salaried Employees Pension Plan, Registration No. 956219, to Reichhold Limited of the amounts under (a)(i), (ii) and (iii) above.

THIS CONSENT IS EFFECTIVE ONLY AFTER the Applicant satisfies me that the entitlements of all members and former members have been settled.

DATED at North York, Ontario, this 26th day of September, 2001.

Tom Golfetto, Director (Acting)
Pension Plans Branch,
by delegated authority from
K. David Gordon,
Deputy Superintendent, Pension Division
by delegated authority from
Superintendent of Financial Services

cc: Kim Ozubko
Blake, Cassels & Graydon LLP

Declaration that the Pensions Benefits Guarantee Fund Applies to Pension Plans – Subsection 83(1) of the PBA

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, R.S.O. 1997, c. 28;

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28, respecting the **Van Dresser Limited Non-Contributory Pension Plan, Registration Number 960005 (formerly C-100753) (the "Pension Plan")**;

TO: **Ernst & Young Inc.**
Ernst & Young Tower
Toronto-Dominion Centre
P.O. Box 251, 222 Bay Street
Toronto, Ontario
M5K lJ7

Attention: Mr. Brian Denega
Senior Vice-President
Administrator of the Van Dresser Limited Pension Plan

AND TO: **Van Dresser Limited**
139 Northfeld Drive
Waterloo, Ontario
N2L 5A6

Attention: Mr. Jeff Bradshaw
Controller
Employer

AND TO: **KPMG Inc.**
(formerly Peat Marwick Thorne Inc.)
Suite 3300, Commerce Court West
P.O. Box 31, Station Commerce Court
Toronto, Ontario
M5L 1B2

Attention: Mr. Michael Creber
Senior Vice-President
Trustee in Bankruptcy and Receiver and Manager of Van Dresser Limited

AND TO: **CAW-Canada**
205 Placer Court
North York, Ontario
M2H 3H9

Attention: Mr. Lewis Gottheil
Counsel

Declaration

WHEREAS:

1. Van Dresser Limited Non-Contributory Pension Plan, Registration No. 960005 (C-100753) (the"Pension Plan"), is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, c. 28, (the "*Act*"); and
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "PBGF") by the *Act* or the regulations made there-under; and
3. The Pension Plan was wound up effective July 17, 1992; and

4. The Superintendent of Pensions appointed Ernst & Young Inc. as the administrator (the "Administrator") of the Pension Plan on September 9, 1992.
5. On June 4, 2001, the former Superintendent of the Financial Services Commission issued a Notice of Proposal dated May 31, 2001, to make a Declaration that the PBGF applies to the Pension Plan; and
6. No notice requiring a hearing by the Financial Services Tribunal, pursuant to subsection 89 (6) of the *Act*, has been received.

NOW THEREFORE TAKE NOTICE I declare, pursuant to sections 83 and 89 of the *Act*, that the PBGF applies to the pension plan for the following reasons:

1. The Supplement to the Wind Up Report filed by the Administrator indicates an estimated funding deficiency of $372,871 as at May 31, 2001.
2. KPMG Inc. was appointed Receiver and Manager of Van Dresser Limited on February 21, 1992, and Trustee in Bankruptcy on May 5, 1992.
3. The Trustee in Bankruptcy of Van Dresser Limited has advised the Administrator that there are no assets available from the Estate of Van Dresser Limited for the Pension Plan.

DATED at North York, Ontario, this 31st day of July, 2001.

K. David Gordon,
Deputy Superintendent, Pension Division
by delegated authority from
Superintendent of Financial Services

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, R.S.O. 1997, c. 28;

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act, 1997*, R.S.O. 1997, c. 28, respecting the **Retirement Benefit Plan for the Employees of Norman Wade Company Limited, Techniprint Services Limited and Norman Wade Management Limited, Registration Number 0315176** (the "Pension Plan");

TO: **Arthur Andersen Inc.**
Suite 1050
4 King Street West
Toronto, Ontario
M5H 1B6

Attention: Lawrence A. Contant
Administrator of the Pension Plan

AND TO: **Norman Wade Company Limited, Techniprint Services Limited and Norman Wade Management Limited**
75 Milner Avenue
Scarborough, Ontario
M1S 3R7

Attention: T. A. Ronaldson
Employer

Declaration

WHEREAS:

1. The Retirement Benefit Plan for the Employees of Norman Wade Company Limited, Techniprint Services Limited and Norman Wade Management Limited (the "Pension Plan"), Registration No. 0315176, is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P.8 as amended by the *Financial Services Commission of Ontario Act, 1997*, c. 28, (the "*Act*"); and
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the *Act* or the regulations made thereunder; and
3. The Pension Plan was wound up effective May 1, 1998; and
4. The Superintendent of Pensions appointed Arthur Andersen Inc. as the administrator (the "Administrator") of the Pension Plan on June 15, 1998; and
5. On July 9, 2001, the Superintendent of Financial Services issued a Notice of Proposal, dated July 6, 2001, to make a Declaration that the Guarantee Fund applies to the Pension Plan; and
6. No notice requiring a hearing by the Financial Services Tribunal, pursuant to subsection 89(6) of the *Act*, has been received.

NOW THEREFORE TAKE NOTICE I declare that, pursuant to section 83 of the *Act*, the guarantee fund applies to the pension plan for the following reasons:

1. The Wind Up Report filed by the Administrator indicates an estimated funding deficiency of $199,252 as at April 1, 2000, with respect to Ontario members, before deduction of wind up costs.

2. On May 1, 1998, Norman Wade Company Limited was assigned into bankruptcy, and the affiliates it operated, namely Techniprint Services Limited and Norman Wade Management Limited, ceased operations on the same day.
3. The trustee in bankruptcy of Norman Wade Company Limited has advised the Administrator that there are no funds available from the estate of the Company to pay to the Pension Plan.

DATED at North York, Ontario, this 28th day of August, 2001.

Tom Golfetto, Director (Acting)
Pension Plans Branch,
by delegated authority from
K. David Gordon,
Deputy Superintendent, Pension Division
by delegated authority from
Superintendent of Financial Services

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, R.S.O. 1997, c. 28;

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28, respecting the **Royal Oak Mines Inc. Pension Plan for Timmins Salaried Employees, Registration Number 0937458** (the "Pension Plan");

TO: **Morneau Sobeco**
1500 Don Mills Road
Suite 500
Toronto, Ontario
M3B 3K4

Attention: Mr. Al Kiel
Partner
Agent for Deloitte & Touche Inc. in its capacity as Administrator of the Royal Oak Mines Inc. Pension Plan for Timmins Salaried Employees

AND TO: **Royal Oak Mines Inc.**
P.O. Box 2010
Timmins, Ontario
P4N 7X7

Attention: Mrs. Rachel A. Pineault
Corporate Manager, Pensions and Benefits
Employer

AND TO: **PricewaterhouseCoopers Inc.**
145 King Street West
Toronto, Ontario
M5H 1V8

Attention: Ms. Louisa Blunda
Interim Receiver and Manager of Royal Oak Mines Inc.

Declaration

WHEREAS:

1. Royal Oak Mines Inc. Pension Plan for Timmins Salaried Employees, Registration No. 0937458 (the "Pension Plan"), is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, c. 28, (the "*Act*"); and
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "PBGF") by the *Act* or the regulations made thereunder; and
3. The Pension Plan was wound up effective February 14, 2000; and
4. The Superintendent of Pensions appointed Deloitte & Touche Inc. as the administrator (the "Administrator") of the Pension Plan on October 13, 1999.
5. On June 25, 2001, I issued a Notice of Proposal dated June 20, 2001 to make a Declaration that the PBGF applies to the Pension Plan; and
6. No notice requiring a hearing by the Financial Services Tribunal, pursuant to subsection 89 (6) of the *Act*, has been received.

NOW THEREFORE TAKE NOTICE I declare, pursuant to sections 83 and 89 of the *Act*, that the PBGF applies to the pension plan for the following reasons:

1. The actuarial report prepared as of March 31, 1999, indicated that the Pension Plan

was underfunded on a solvency basis as at that date in that the total value of its assets was not sufficient to pay the total actuarial value of benefits to that date. Furthermore, the March 31, 2001 cost certificate filed by the Administrator confirms that there have not been any events that would lead to the elimination of the deficit reported by the March 31, 1999 actuarial valuation.

2. PricewaterhouseCoopers Inc. was appointed Interim Receiver and Manager of Royal Oak Mines Inc. on April 16, 1999.
3. The Interim Receiver and Manager of Royal Oak Mines Inc. has advised the Administrator that there are no assets available from the Estate of Royal Oak Mines Inc.

DATED at North York, Ontario, this 28th day of August, 2001.

Tom Golfetto, Director (Acting)
Pension Plans Branch,
by delegated authority from
K. David Gordon,
Deputy Superintendent, Pension Division
by delegated authority from
Superintendent of Financial Services

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, R.S.O. 1997, c. 28;

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28, respecting the **Royal Oak Mines Inc. Pension Plan for Timmins Hourly Employees, Registration Number 0937466** (the "Pension Plan");

TO: **Morneau Sobeco**
1500 Don Mills Road
Suite 500
Toronto, Ontario
M3B 3K4

Attention: Mr. Al Kiel
Partner
Agent for Deloitte & Touche Inc. in its capacity as Administrator of the Royal Oak Mines Inc. Pension Plan for Timmins Hourly Employees

AND TO: **Royal Oak Mines Inc.**
P.O. Box 2010
Timmins, Ontario
P4N 7X7

Attention: Mrs. Rachel A. Pineault
Corporate Manager, Pensions and Benefits
Employer

AND TO: **PricewaterhouseCoopers Inc.**
145 King Street West
Toronto, Ontario
M5H 1V8

Attention: Ms. Louisa Blunda
Interim Receiver and Manager of Royal Oak Mines Inc.

AND TO: **United Steelworkers of America Local 4440**
57 Mountjoy Street South
Timmins, Ontario
P4N 1S6

Attention: Mr. Rick Chopp
President

Declaration

WHEREAS:

1. Royal Oak Mines Inc. Pension Plan for Timmins Hourly Employees, Registration No. 0937466 (the "Pension Plan") is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P.8 as amended by the *Financial Services Commission of Ontario Act, 1997*, c. 28, (the "*Act*"); and
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "PBGF") by the *Act* or the regulations made there-under; and
3. The Pension Plan was wound up effective December 31, 1999; and
4. The Superintendent of Pensions appointed Deloitte & Touche Inc. as the administrator (the "Administrator") of the Pension Plan on October 13, 1999.
5. On June 25, 2001, I issued a Notice of Proposal dated June 20, 2001 to make a Declaration that the PBGF applies to the Pension Plan; and
6. No notice requiring a hearing by the Financial Services Tribunal, pursuant to sub-

section 89 (6) of the *Act*, has been received.

NOW THEREFORE TAKE NOTICE I declare, pursuant to sections 83 and 89 of the *Act*, that the PBGF applies to the Pension Plan for the following reasons:

1. The actuarial report prepared as of March 31, 1999, indicated that the Pension Plan was underfunded on a solvency basis as at that date in that the total value of its assets was not sufficient to pay the total actuarial value of benefits to that date. Furthermore, the February 28, 2001 cost certificate filed by the Administrator confirms that there have not been any events that would lead to the elimination of the deficit reported by the March 31, 1999 actuarial valuation.
2. PricewaterhouseCoopers Inc. was appointed Interim Receiver and Manager of Royal Oak Mines Inc. on April 16, 1999.
3. The Interim Receiver and Manager of Royal Oak Mines Inc. has advised the Administrator that there are no assets available from the Estate of Royal Oak Mines Inc.

DATED at North York, Ontario, this 28th day of August, 2001.

Tom Golfetto, Director (Acting)
Pension Plans Branch,
by delegated authority from
K. David Gordon,
Deputy Superintendent, Pension Division
by delegated authority from
Superintendent of Financial Services

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28;

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28, respecting the **Hudson Bay Diecasting Limited Salaried Employees Retirement Income Plan, Registration Number 0380170**;

TO: **Arthur Andersen Inc.**
Suite 1050
4 King Street West
Toronto, Ontario
M5H 1B6

Attention: Mr. David R. Kearney
Administrator

AND TO: **Hudson Bay Diecasting Limited**
230 Orenda Road
Brampton, Ontario
L6T 1E9

Attention: Mr. Dwight W. Rollins
Employer

AND TO: **PricewaterhouseCoopers Inc.**
Suite 1100
One Robert Speck Parkway
Mississauga, Ontario
L4Z 3M3

Attention: Mr. Andrew Wilczynski
Trustee in Bankruptcy for Hudson Bay Diecasting Limited

Declaration

WHEREAS:

1. The Hudson Bay Diecasting Limited Salaried Employees Retirement Income Plan, Registration No. 380170 (the "Plan"), is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "*Act*"); and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the *Act* or the regulations made thereunder; and
3. The Superintendent of Pensions appointed Arthur Andersen Inc. as the administrator (the "Administrator") of the Plan on January 17, 1996; and
4. The Plan was wound up effective September 7, 1995; and
5. On July 30, 2001, the Deputy Superintendent, Pension Division, issued a Notice of Proposal, dated July 23, 2001, to make a Declaration that the Guarantee Fund applies to the Plan; and
6. No notice requiring a hearing by the Financial Services Tribunal, pursuant to subsection 89 (6) of the *Act*, has been received.

NOW THEREFORE TAKE NOTICE I declare, pursuant to sections 83 and 89 of the *Act*, that the Guarantee Fund applies to the Plan for the following reasons:

1. The funded ratio of the Plan has been estimated to be 67.7% with an estimated claim against the Guarantee Fund at wind up of $118,028.00.
2. The employer, Hudson Bay Diecasting Limited, was assigned into bankruptcy on September 7, 1995.

3. The trustee in bankruptcy for Hudson Bay Diecasting Limited has advised the Administrator that there are no funds available from the estate of Hudson Bay Diecasting Limited to make payment to the Plan.
4. The Administrator advised that it is of the opinion that there are reasonable and probable grounds for concluding that the funding requirements of the *Act* and regulation cannot be satisfied.

DATED at North York, Ontario, this 24th day of September, 2001.

Tom Golfetto, Director (Acting)
Pension Plans Branch,
by delegated authority from
K. David Gordon,
Deputy Superintendent, Pension Division
by delegated authority from
Superintendent of Financial Services

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28;

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28, respecting the **Hudson Bay Diecasting Limited Hourly Employees Retirement Income Plan, Registration Number 362178**;

TO: **Arthur Andersen Inc.**
Suite 1050
4 King Street West
Toronto, Ontario
M5H 1B6

Attention: Mr. David R. Kearney
Administrator

AND TO: **Hudson Bay Diecasting Limited**
230 Orenda Road
Brampton, Ontario
L6T 1E9

Attention: Mr. Dwight W. Rollins
Employer

AND TO: **PricewaterhouseCoopers Inc.**
Suite 1100
One Robert Speck Parkway
Mississauga, Ontario
L4Z 3M3

Attention: Mr. Andrew Wilczynski
Trustee in Bankruptcy for Hudson Bay Diecasting Limited

AND TO: **National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW - Canada), Local 1285**
205 Placer Court
Toronto, Ontario
M2H 3H9

Attention: Jeff Wareham, National Representative, Pension and Benefits Department.
Union

Declaration

WHEREAS:

1. The Hudson Bay Diecasting Limited Hourly Employees Retirement Income Plan, Registration No. 362178 (the "Plan"), is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "*Act*"); and
2. The Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "Guarantee Fund") by the *Act* or the regulations made thereunder; and
3. The Superintendent of Pensions appointed Arthur Andersen Inc. as the administrator (the "Administrator") of the Plan on January 17, 1996.
4. The Plan was wound up effective September 7, 1995; and
5. On July 30, 2001, the Deputy Superintendent, Pension Division, issued a Notice of Proposal, dated July 23, 2001, to make a Declaration that the Guarantee Fund applies to the Plan; and

6. No notice requiring a hearing by the Financial Services Tribunal, pursuant to subsection 89 (6) of the *Act*, has been received.

NOW THEREFORE TAKE NOTICE I declare, pursuant to sections 83 and 89 of the *Act*, that the Guarantee Fund applies to the Plan for the following reasons:

1. The funded ratio of the Plan at wind up is estimated to be 78.9%, with an estimated claim against the Guarantee Fund at wind up of $472,444.00.
2. The employer, Hudson Bay Diecasting Limited, was assigned into bankruptcy on September 7, 1995.
3. The trustee in bankruptcy for Hudson Bay Diecasting Limited has advised the Administrator that there are no funds available from the estate of Hudson Bay Diecasting Limited to make payment to the Plan.
4. The Administrator is of the opinion that there are reasonable and probable grounds for concluding that the funding requirements of the *Act* and regulation cannot be satisfied.

DATED at North York, Ontario, this 24th day of September, 2001.

Tom Golfetto, Director (Acting)
Pension Plans Branch,
by delegated authority from
K. David Gordon,
Deputy Superintendent, Pension Division
by delegated authority from
Superintendent of Financial Services

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, R.S.O. 1997, c. 28;

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28, respecting the **Pension Plan for Hourly Employees of Alumiprime Windows Limited, Registration Number 1021005** (the "Pension Plan");

TO: **Arthur Andersen Inc.**
Suite 1050
4 King Street West
Toronto,Ontario
M5H 1B6

Attention: Lawrence Contant
Administrator of the Pension Plan for Hourly Employees of Alumiprime Windows Limited

AND TO: **Alumiprime Windows Limited**
40 St. Regis Crescent North
Downsview, Ontario
M3J 1Z2

Attention: Martin Cash
Employer

AND TO: **Shiner & Associates Inc.**
30 Wertheim Court
Suite 22
Richmond Hill, Ontario
L4B 1B9

Attention: Debbie Geller
Trustee in Bankruptcy, Alumiprime Windows Limited

AND TO: **United Steelworkers of America**
25 Cecil Street
Toronto, Ontario
M5T 1N1

Attention: Mohamed Baksh
Union

Declaration

WHEREAS:

1. The Pension Plan for Hourly Employees of Alumiprime Windows Limited, Registration No. 1021005 (the "Pension Plan"), is registered under the *Pension Benefits Act*, R.S.O. 1990, c. P.8 as amended by the *Financial Services Commission of Ontario Act, 1997*, c. 28, (the "*Act*"); and
2. The Pension Plan provides defined benefits that are not exempt from the application of the Pension Benefits Guarantee Fund (the "PBGF") by the *Act* or the regulations made thereunder; and
3. The Pension Plan was wound up effective November 24, 1998; and
4. The Superintendent of Pensions appointed Arthur Andersen Inc. as the administrator (the "Administrator") of the Pension Plan on July 9, 1999; and
5. On July 31, 2001, I issued a Notice of Proposal dated July 26, 2001 to make a Declaration that the PBGF applies to the Pension Plan; and
6. No notice requiring a hearing by the Financial Services Tribunal, pursuant to subsection 89 (6) of the *Act*, has been received.

NOW THEREFORE TAKE NOTICE I declare, pursuant to sections 83 and 89 of the *Act*, that the PBGF applies to the Pension Plan for the following reasons:

1. The Extracts of the Actuarial Valuation Report filed by the Administrator indicates an estimated funding deficiency of $177,100.00 as at November 24, 1998.
2. On November 24, 1998, Alumiprime Windows Limited was adjudged bankrupt.
3. The trustee in bankruptcy of Alumiprime Windows Limited has advised the Administrator that there are no assets available from the bankrupt estate of Alumiprime Windows Limited for the Pension Plan.

DATED at North York, Ontario, this 25th day of September, 2001.

Tom Golfetto, Director (Acting)
Pension Plans Branch,
by delegated authority from
K. David Gordon,
Deputy Superintendent, Pension Division
by delegated authority from
Superintendent of Financial Services

Allocations of Money from the Pension Benefits Guarantee Fund – Subsection 34(7) of the Regulation 909

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, R.S.O. 1997, c. 28;

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to Make a Declaration under Section 83 of the *Pension Benefits Act*, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28, respecting the **Van Dresser Limited Non-Contributory Pension Plan, Registration Number 960005 (formerly C-100753)** (the "Pension Plan");

TO: **Ernst and Young Inc.**
Ernst and Young Tower
Toronto-Dominion Centre
P.O. Box 251, 222 Bay Street
Toronto, Ontario
M5K 1J7

Attention: Mr. Brian Denega
Senior Vice-President
Administrator of the Van Dresser Non-Contributory Pension Plan

Allocation

WHEREAS on July, 2001, I declared, pursuant to sections 83 and 89 of the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (the "*Act*"), that the Pension Benefits Guarantee Fund (the "PBGF") applies to the Van Dresser Limited Non-Contributory Pension Plan, Registration No. 960005 (formerly C-100753) (the "Pension Plan");

NOW THEREFORE I shall allocate from the PBGF and pay to the Pension Plan, pursuant to subsection 34(7) of R.R.O. 1990, Reg. 909 under the *Act* (the "Regulation"), an amount not to exceed $372,871, as at May 31, 2001, to provide, together with the Ontario assets, for the benefits determined in accordance with section 34 of the Regulation. Any money allocated from the PBGF but not required to provide such benefits shall be returned to the PBGF.

DATED at North York, Ontario, this 26th day of July, 2001.

K. David Gordon
Deputy Superintendent, Pension Division
by delegated authority from
Superintendent of Financial Services

TRIBUNAL ACTIVITIES

Appointments of Financial Services Tribunal Board Members

Name and O.C.	Effective Appointment Date	Expiry Date
Milczynski, Martha (Chair)		
O.C. 1622/2001	June 20, 2001	June 19, 2004
O.C. 1665/99	October 6, 1999	July 7, 2001
O.C. 1808/98	July 8, 1998	October 6, 1999
McNairn, Colin (Vice-Chair)		
O.C. 1623/2001	June 20, 2001	June 19, 2004**
O.C. 1809/98	July 8, 1998	July 7, 2001
Bush, Kathryn M. (Vice-Chair)		
O.C. 1052/2000	May 31, 2000	May 30, 2002**
O.C. 1666/99	October 6, 1999	June 16, 2000
O.C. 1191/99	June 17, 1999	October 6, 1999
O.C. 904/97	May 14, 1997	June 16, 1999
Corbett, Anne		
O.C. 1438/2001	June 19, 2004**	June 20, 2001
Erlichman, Louis		
O.C. 2527/98	December 9, 1998	December 8, 2001
O.C. 1592/98	June 17, 1998	December 16, 1998
Forbes, William M.		
O.C. 1624/2001	June 20, 2001	June 19, 2002**
O.C. 520/98	March 25, 1998	March 24, 2001
Gavin, Heather		
O.C. 11/99	January 13, 1999	January 12, 2002
Greville, M. Elizabeth		
O.C. 222/99	January 27, 1999	January 26, 2002
O.C. 2405/95	February 8, 1996	February 7, 1999
Martin, Joseph P.		
O.C. 1626/2001	June 20, 2001	June 19, 2004**
O.C. 1810/98	July 8, 1998	July 7, 2001
Moore, C.S. (Kit)		
O.C. 1625/2001	June 20, 2001	June 19, 2004**
O.C. 1591/98	July 1, 1998	June 30, 2001
Short, David A.		
O.C. 2118/2001	October 24, 2001	October 23, 2004**
Stephenson, Joyce Anne		
O.C. 2409/98	November 4, 1998	November 3, 2001
O.C. 1930/95	October 28, 1995	October 27, 1998
Vincent, J. David		
O.C. 2119/2001	October 24, 2001	October 23, 2004**
Wires, David E.		
O.C. 2166/99	February 26, 2000	February 25, 2003
O.C. 257/97	February 27, 1997	February 26, 2000

**Or on the day FSCO/OSC merges, if earlier

Pension Hearings Before the Financial Services Tribunal

Brewers Retail Pension Plan for Bargaining Unit Employees, Registration Number 336081, FST File Number P0099-2000;

On February 24, 2000, Mr. Patrick J. Moore, President of the United Brewers' Warehouse Workers, Local 375W, requested a hearing seeking an Order directing "the Superintendent to order the administrator of the Plan (Brewers Retail Inc.) to cease administering the Plan with an improperly constituted advisory committee and to cause the creation of a properly constituted advisory committee pursuant to the *Act* and formulating documents." The hearing request arose as a result of a letter from the Superintendent dated January 26, 2000, in which the Superintendent stated that there were no grounds under the *Pension Benefit Act* and Plan to order the establishment of an advisory committee. The letter also stated that any issue that Mr. Moore may have with the letter of understanding, which is part of the agreement between Brewers Retail Inc. and United Food and Commercial Worker's Provincial Board (the "UBWW/UFCW"), wherein Brewers Retail Inc. acknowledges that the UBWW/UFCW has a right to appoint a pension committee with membership, roles and responsibilities as set out in the *Pension Benefit Act*, would be a labour issue and not within the Superintendent's jurisdiction.

At a pre-hearing conference held on May 17, 2000, Brewer's Retail Inc. and the UBWW/UFCW were granted full party status. At the pre-hearing conference the parties agreed that before the Financial Services Tribunal considered the matter on its merits, it was necessary for it to determine the preliminary issue of whether it had jurisdiction to grant the relief sought in Mr. Moore's Request for Hearing. At the pre-hearing conference, the Superintendent raised the issue of whether notice to former members of the Plan ought to be provided as it appeared that former members of the Plan were not represented.

In a telephone conference held on November 16, 2000, the hearing on the notice issue was scheduled for March 7, 2001. The hearing on the jurisdictional issue was scheduled for September 28, 2001.

On March 7, 2001, the Tribunal decided that former members had received adequate notice of the proceeding through the existing parties to the proceeding. The written reasons for Decision dated April 10, 2001, were published in Volume 10, Issue 2 of the Pension Bulletin.

On September 28, 2001, the Tribunal decided that it did not have jurisdiction to grant the relief sought by Mr. Moore. The written reasons for Decision have not yet been issued.

Ontario Public Service Pension Plan, Registration Number 208777, FST File Number P0116-2000;

On August 2, 2000, the Ontario Pension Board filed a request for hearing in respect of the Superintendent's Notice of Proposal dated July 12, 2000, ordering the Ontario Pension Board to pay Mr. Victor Burns his full pension benefits, with interest payable pursuant to subsection 24(11) of Regulation 909 made under the *Pension Benefit Act*, retroactive to the date of Mr. Burns' retirement from the Ontario Provincial Police ("OPP"), within 60 days from the date of the Order, and on an ongoing basis.

An Application for Party Status was filed by

Victor Burns on November 9, 2000, and full party status was granted by the Financial Services Tribunal at a pre-hearing conference held on November 23, 2000.

The hearing was held on October 15 and 16, 2001.

David Horgan – Ontario Public Service Pension Plan, Registration Number 208777, FST File P0120-2000;

On August 11, 2000, David Horgan requested a hearing regarding the Superintendent's Notice of Proposal dated July 12, 2000, proposing to refuse to make an order under, section 87 of the *Pension Benefit Act*, with respect to Mr. Horgan's claim that he is entitled to receive pension benefits from the Plan.

The Ontario Pension Board filed an Application for Party Status on September 19, 2000, and was granted full party status at the pre-hearing conference held on November 23, 2000. The hearing was held on July 11, 2001.

On August 1, 2001, the Tribunal issued written reasons for Decision affirming the Superintendent's Notice of Proposal and dismissing the application to the Tribunal to make an Order. Reasons for Decision, dated August 1, 2001, are published in this Pension Bulletin on page 149.

Rupinder Anand and OPSEU Pension Trust;

On February 6, 2001, Rupinder Anand requested a hearing regarding the Superintendent's Notice of Proposal dated January 4, 2001, proposing to refuse to make an order undersection 87 of the *Pension Benefit Act*, with respect to Mr. Anand's claim that he is eligible to receive pension benefits from the Ontario Public Service Pension Plan.

The OPSEU Pension Trust ("OPT") filed an application for party status on February 14, 2001. Counsel for Mr. Anand (who is also counsel for Mr. Horgan) requested that the hearing in this matter be joined with the hearing in Horgan, as the issues in both cases were virtually identical. None of the other parties objected to the joinder. An order granting OPT full party status and joining the hearings, in the Horgan and Anand matters, to be heard concurrently, was signed by the Financial Services Tribunal on March 7, 2001.

The hearing was held on July 11, 2001.

On August 1, 2001, the Tribunal issued written reasons for Decision affirming the Superintendent's Notice of Proposal and dismissing the application to the Tribunal to make an Order. Reasons for Decision, dated August 1, 2001, are published in this Pension Bulletin on page 149.

Imperial Oil Ltd., FST File Number P0130-2000;

On October 31, 2000, Imperial Oil Limited requested a hearing with respect to the Superintendent's Notice of Proposal dated October 3, 2000, proposing to refuse to approve a partial wind up report in respect of two Plans of which Imperial Oil is the Administrator.

The stated reasons for the proposed refusal include the failure of each wind up report to do the following: (a) reflect the liabilities associated with all of the members of the Plan whose employment was terminated by Imperial Oil during the wind-up period; (b) apply the grow-in provisions of section 74 of the *Pension Benefit Act* in a proper manner; (c) provide benefits in accordance with elections made, as required under subsection 72(1) of the *Pension Benefit Act*, among various options including those available as a result of partial wind-up; and (d) provide for the distribution of assets related to the partial wind up group.

A pre-hearing conference was held on June 19, 2001. At the pre-hearing conference, the Superintendent agreed to amend the Notice of Proposal in this matter to delete reference to (d) above.

A hearing and preliminary motion with respect to answers to interrogatories was held on July 25, 2001. The Tribunal ordered the Superintendent to respond to the first and second set of the Applicant's interrogatories within six weeks of the date of the Order subject to the qualification that the Superintendent need not produce any documents or reveal any communications to which the law of privilege applies. Written Reasons for Order dated September 10, 2001, are published in the Pension Bulletin on page 155.

A continuation of the Pre-Hearing Conference is scheduled for December 20, 2001.

Marshall-Barwick (formerly Marshall Steel Limited), Registration Number 0968081, FST File Number P150-2001;

On January 16, 2001, Marshall-Barwick Inc. (formerly Marshall Steel Limited) requested a hearing in respect of the Superintendent's Notice of Proposal dated December 12, 2000. The Superintendent is proposing to refuse to approve a Partial Wind Up Report as at August 28, 1992, respecting the Retirement Plan for Salaried Employees of Marshall Steel Limited and Associated Companies in relation to employees who ceased to be employed by Marshall Steel Limited as a result of the closure of its plant in Milton, Ontario. The Superintendent's basis for the Notice of Proposal is that the Report does not protect the interests of all those affected by the partial wind-up, specifically, Mr. Jeffrey G. Marshall, an employee who was terminated during the wind-up period. On June 4, 2001, Jeffrey G. Marshall applied for party status.

A pre-hearing conference was held on August 13, 2001. The hearing is scheduled for November 29 and 30, 2001.

National Steel Car Limited, Registration Numbers 0215020 and 0215038, FST File Number P154-2001;

On March 7, 2001, representatives for members of the Pension Plan for Salaried Employees of National Steel Car Limited requested a hearing regarding the Superintendent's consent to the transfer of all of the assets of the Pension Plan for Salaried Employees of National Steel Car Limited to the Pension Plan for Hourly-Paid Employees of National Steel Car Limited. The Salaried Plan is in a surplus position and the Hourly-Paid Plan has an unfunded liability.

Applications for Party Status were filed on behalf of National Steel Car Limited and certain representatives of the United Steel Workers of America, Local 7135, on behalf of the members of the Hourly-Paid Plan. The two applicants for party status were joined as parties by order at the pre-hearing conference held on June 21, 2001. The main issues in this case are whether the Tribunal has the jurisdiction to entertain the applicant's request for a hearing and whether the Superintendent's consent to the transfer of assets should be set aside or varied.

A Settlement Conference was held September 24, 2001. The hearing is scheduled for January 15, 16 and 17, with a reserve date of the 21, 2002.

Independent Order of Foresters Fieldworkers, Registration Numbers 0354399, FST File Number P155-2001;

On August 12, 2001, The Independent Order of Foresters ("IOF") requested a hearing with respect to the Superintendent's Notice of

Proposal dated March 19, 2001, to refuse to consent to an application for the payment of the surplus of the IOF Fieldworkers Pension Plan to the employer. The Superintendent proposed to refuse consent on the basis that she was not satisfied that the Plan had a surplus and that the Plan provides for the payment of any surplus to the employer on the wind up of the Plan.

A pre-hearing conference was held on July 4, 2001, at which Mr. Irvin Grainger was joined as a party to the proceeding. The pre-hearing conference continued on July 27, 2001, at which time it was agreed that a settlement conference would be held on November 13, 2001. A motion by IOF for a determination of the appropriate manner and form of giving notice of the hearing in this matter is scheduled to be heard on December 7, 2001, by a panel of the Tribunal, to be followed by a further continuation of the pre-hearing conference.

Cooper Industries (Canada) Inc., Registration Number 0240622, FST File Number P156-2001;

On April 17, 2001, Cooper Industries (Canada) Inc. requested a hearing with respect to the Superintendent's Notice of Proposal dated March 8, 2001, to Refuse to Approve a Partial Wind-Up Report, prepared in November 1999 in relation to the partial wind-up of the Retirement Plan for Salaried Employees of Cooper Canada - Plan A, Registration No. 240622, as at March 30, 1992, in relation to employees at the Port Hope location of Cooper Industries (Canada) Inc. and to make an Order requiring Cooper Industries (Canada) Inc. to refrain from using and to preserve for distribution that portion of the surplus of the Plan attributable to the Port Hope location. The basis for the Notice of Proposal was that the Partial Wind-Up Report proposed that the surplus assets of the Plan attributable to the Port Hope location be retained for continuing application toward future current service contributions for the Plan's continuing membership and, therefore, failed to provide for distribution of the Port Hope surplus assets.

On May 14, 2001, Messrs. Ray Mills and Larry Battersby applied for Party Status on behalf of Plan members and former Plan members employed at the Port Hope plant and beneficiaries of same.

A pre-hearing conference was held on September 5, 2001, at which Messrs. Mills and Battersby were joined as parties. The pre-hearing conference is scheduled to continue on March 29, 2002.

Pension Plan for the Employees of Dyment Limited, Registration Number 0242735,FST File P0157-2001;

On April 18, 2001, Dyment Limited requested a hearing with respect to the Superintendent's Notice of Proposal dated March 19, 2001, to make an order that the Pension Plan for the Employees of Dyment Limited, Registration No. 0242735, be wound up in full effective August 23, 1996, and to refuse to approve the actuarial report prepared in April 1997 in relation to the partial wind up of the Plan as at August 23, 1996.

The basis for the Notice of Proposal was that as of August 23, 1996, there were no remaining active members in the Plan and Dyment was no longer required to make contributions. The basis for refusing to approve the actuarial report is that the report does not meet the requirements of the *Pension Benefit Act* and the Regulations and does not protect the interests of the members or former members of the Plan.

On May 22, 2001, Mr. Mobeen Khaja applied for Party Status. Mr. Khaja was part of a group of employees who were subject to the partial wind up of the Plan, and would be affected by a full wind up of the Plan.

A pre-hearing conference was held on July 13, 2001. Hearing dates are scheduled for January 24 and 25, 2002.

Camco Inc. Pension Plan Number 4 and Pension Plan Number 7, FST File Number P160-2001;

On May 14, 2001, Camco Inc. requested a hearing with respect to the Superintendent's Notice of Proposal dated March 30, 2001, to Refuse to Consent to a Transfer of Assets from the Camco Inc. Pension Plan No. 4, Registration Number 0583302, to the Camco Inc. Pension Plan No. 7, Registration No. 0583336.

The basis for the Notice of Proposal was that the asset transfer does not protect the pension benefits and other benefits of the former members of Plan No. 4 under subsection 81(5) of the *Pension Benefit Act*.

A pre-hearing conference was held on September 24, 2001. A settlement conference is scheduled for December 17, 2001.

Consumers Packaging Inc., Registration Number 0998682, FST File Number P162-2001;

On May 17, 2001, Consumers Packaging Inc. requested a hearing with respect to the Superintendent's Notice of Proposal dated April 20, 2001, to Refuse to Approve a Partial wind-Up Report filed by Consumers Packaging Inc. on May 19, 2000, with respect to a partial wind up of the Consumers Packaging Inc. Pension Plan II, Registration No. 0998682, as at May 7, 1997, and to Refuse to Register an amendment to such Pension Plan filed by Consumers Packaging Inc. on May 19, 2000, titled Amendment No. 2.

The basis for the Notice of Proposal was that Consumers Packaging Inc. filed a partial wind up report in 1997. The Superintendent issued two Notices of Proposal in 1999 ordering Consumers Packaging Inc. to accept as members of the Plan certain replacement call-in employees and refusing to approve the 1997 partial wind up report on the grounds that the replacement call-in employees were not included in the report and that "grow-in" to plant closure benefits was not provided to unionized hourly employees affected by the partial wind up. Consumers Packaging Inc. requested a hearing before the Financial Services Tribunal with respect to both Notices of Proposal. The hearing concerning the call-in employees was settled by the parties and Consumers Packaging Inc. accepted as members of the Plan those replacement call-in employees who met certain conditions. The hearing request regarding the "grow-in" benefits was withdrawn. Consumers Packaging Inc. was ordered to file an amended partial wind up report. In addition, in 1997 Consumers Packaging filed an application to register Amendment No. 2 to the Plan which provided enhanced bridge benefits to some members.

On May 19, 2000, Consumers Packaging filed a revised partial wind up report (the "revised report") and a revised application to register Amendment No. 2 (the "revised Amendment"). The Superintendent issued the April 20, 2001 Notice of Proposal based on that the revised Amendment is void pursuant to subsection 19(3)(b) of the *Pension Benefit Act* and that the revised report does not meet the requirements of the *Pension Benefit Act* pursuant to subsection 70(5) because the commuted value of the

pension benefits and ancillary benefits for the affected members is calculated based on the revised Amendment, which is void under the *Act* and does not protect the interests of the members and former members of the Plan for the same reason.

The Superior Court of Justice, Commercial List issued an Order, dated May 23, 2001, stating that any suit, action, enforcement process, extra-judicial proceeding, regulatory, administrative or other proceeding against or in respect of Consumers Packaging Inc. already commenced be stayed and suspended until and including June 22, 2001. A further Order was issued on June 18, 2001, extending the stay period until August 15, 2001, and again until October 1, 2001.

CBS Canada Co., Registration Numbers 348409 and 526632, FST File Number P164-2001;

On June 8, 2001, CBS Canada Co. requested a hearing regarding the Superintendent's Notices of Proposal dated May 9 and 15, 2001 to Refuse to Approve a Partial Wind-Up Report in respect of the businesses carried on by CBS Canada Co. (formerly Westinghouse) at its Burlington, Ontario; London, Ontario; St. Jean, Quebec; Hamilton, Ontario; and Motors Division plants.

The basis for the Notices of Proposal was that the Partial Wind-up Report failed to provide employer request early retirement benefits and bridge benefits, contemplated by the Plan, to all members of the partial wind-up groups whose age plus years of service equalled at least 55 and because the Report failed to provide for the distribution of any surplus assets relating to particular wind-up groups.

On June 19, 2001, CAW Canada filed an application for party status. A Pre-Hearing Conference is scheduled for November 5, 2001.

Crown Cork & Seal Canada Inc., Registration Numbers 474205, 595371 and 338491, FST File Number P0165-2001;

On June 29, 2001, Crown Cork & Seal Canada Inc. requested a hearing with respect to the Superintendent's Notice of Proposal dated May 29, 2001, to refuse to consent to a transfer of assets proposed by Crown Cork & Seal Canada Inc. from the Crown Cork & Seal Canada Inc. Pension Plan for Salaried Employees, Registration No. 0474205 and The Pension Plan for Clerical Employees of Crown Cork & Seal Canada Inc., Registration No. 0595371, into the Crown Cork & Seal Canada Inc. Pension Plan for Employees, Registration No. 338491.

The basis for the refusal is that the asset transfer does not protect the pension benefits and other benefits of the members and former members of the Plans.

At the request of both parties a Settlement Conference was held on October 30, 2001, prior to the scheduling of the Pre-Hearing Conference. The parties agreed to adjourn this matter *sine die* pending discussions between the parties.

Samsonite Canada Inc., Registration Number 398578, FST File Number P0166-2001;

On July 3, 2001, Samsonite Canada Inc. requested a hearing with respect to the Superintendent's Notice of Proposal dated June 1, 2001, to refuse to consent to the application of Samsonite Canada Inc. dated November 13, 2000, for the payment of surplus to the Employer under subsection 78(1) of the *Pension Benefits Act* from the Samsonite Canadian Service Related Pension Plan, Registration No. 398578.

A Pre-Hearing Conference is scheduled for November 9, 2001.

James MacKinnon – Labourers' Pension Fund of Central and Eastern Canada, Registration Number 573188, FST File Number P0167-2001;

On July 13, 2001, James MacKinnon requested a hearing with respect to the Superintendent's Notice of Proposal dated June 20, 2001, to refuse to make an Order regarding Mr. MacKinnon's request that he is entitled to receive a "Thirty and Out" pension benefit from the Labourers' Pension Fund of Central and Eastern Canada. The basis for the refusal is that in refusing to grant Mr. MacKinnon a "Thirty and Out" pension, the Plan administrators have administered the Plan in compliance with requirements of the *Pension Benefits Act*, the Regulations and the filed documents in respect of which the Superintendent of Financial Services has issued a certificate of registration. Subsection 87(2) of the *Act* allows the Superintendent to make an order only if the Superintendent is of the opinion, upon reasonable and probable grounds, that the pension plan or fund is not being administered in accordance with the *Act*, the Regulations or the pension plan.

On July 31, 2001, the Board of Trustees of the Labourers' Pension Fund of Central and Eastern Canada filed for party status on the basis that they are the Administrators of the Plan and wish to fulfil their fiduciary duties to all beneficiaries to ensure that only valid and proper claims for benefits are paid out from the Fund to protect the interests of all beneficiaries.

A Pre-Hearing Conference is scheduled for November 22, 2001.

Doris Mair – Philip Services Inc. Pension Plan for Intermetco Senior Management Employees, Registration Number 0687608, FST File Number P0168-2001;

On August 17, 2001, Doris Mair requested a hearing with respect to the Superintendent's Notice of Proposal dated July 26, 2001, to refuse to make an Order that the Philip Services Inc. Pension Plan for Intermetco Senior Management Employees, Registration No. 0687608 be wound up in part.

On October 19, 2001, Ms. Mair withdrew her request for a hearing.

Imperial Oil Limited Retirement Plan, Registration Number 347054, FST File Number P0169-2001;

In this matter, the Superintendent alleges that, effective April 28, 1995, Imperial Oil Limited ("IOL") sold its credit card operations to General Electric Capital Canada Inc. ("GE Capital"), at which time 37 individuals, who had been employed by IOL in that business and were members of the IOL Retirement Plan, became employees of GE Capital and members of its pension plan, while maintaining their accrued benefits in the IOL Retirement Plan.

On August 3, 2001, the Superintendent issued Notices of Proposal to Make Orders requiring:

- that the IOL Retirement Plan be wound up in relation to those members and former members of the Plan who ceased to be employed by GE Capital, between March 2000 and July 2000, as a result of the closure of its Markham, Ontario credit card facility, and
- that such members and former members of the IOL Retirement Plan be given credit for both age and service at the time they ceased

to be employed by GE Capital when determining their benefits, in accordance with section 80(1)(c) of the *Pension Benefits Act*, under the IOL Retirement Plan.

On August 24, 2001, IOL requested a hearing in respect of these Notices of Proposal.

A Pre-Hearing Conference is scheduled for January 9, 2002.

Stanley Canada Inc., Registration Number 456897, FST File Number P0170-2001;

On August 27, 2001, Stanley Canada Inc. requested a hearing with respect to the Superintendent's Notice of Proposal dated July 26, 2001, to refuse to consent to the application for payment of surplus to the Employer dated April 1999, pursuant to section 78(1) of the *Pension Benefit Act*.

A Pre-Hearing Conference is scheduled for November 28, 2001.

Canadian Tack & Nail Ltd., Registration Number 581306, FST File Number P0171-2001;

On September 14, 2001, Canadian Tack & Nail Ltd. requested a hearing regarding the Superintendent's Notice of Proposal dated August 14, 2001, to Make an Order under section 87 of the *Pension Benefit Act*, requiring the Employer or Administrator of the Plan to remit within 30 days of receiving the Notice of Proposal, outstanding contributions in the amount of $67,933 as of December 31, 1999, owed to the Pension Fund, together with interest payable under section 24 of the Regulation 909 under the *Act*.

The basis for the Notice of Proposal is that subsection 87(2) of the *Act* allows the Superintendent to make an order if the Superintendent is of the opinion, upon reasonable and probable grounds, that the pension plan or fund is not being administered in accordance with the *Act*, the Regulations or the pension plan or if the employer, administrator of a pension plan, or any other person is contravening a requirement of the *Act* or the Regulations.

A Pre-Hearing Conference is being scheduled for February 2002.

The Corporation of the City of Kitchener Pension Plan for Fire Department Employees, Registration Number 239475, FST File Number P0172-2001;

On September 20, 2001, The Corporation of the City of Kitchener requested a hearing regarding the Superintendent's Notice of Proposal dated August 23, 2001, to refuse to consent to the application for payment of surplus to the employer dated July 17, 2000, pursuant to section 78(1) of the *Pensions Benefit Act* from The City of Kitchener Pension Plan for Fire Department Employees, Registration No. 239475.

Financial Hardship

Application to the Superintendent of Financial Services for Consent to Withdraw Money from a Locked-in Retirement Account, Life Income Fund or Locked-in Retirement Income Fund based on Financial Hardship.

There have been no Requests for Hearing received since the last publication of the Pension Bulletin.

Decisions to be Published

Horgan & Anand	P0120-2000, P0147-2001	August 1, 2001
Imperial Oil	P0130-2000	September 10, 2001

Financial Services Tribunal Decisions with Reasons

INDEX NO.:	FST File No. P0120-2000 and P0147-2001
PLAN:	Ontario Public Service Employees' Union Pension Plan, Registration Number 1012046
DATE OF DECISION:	August 1, 2001
PUBLISHED:	Bulletin 10/3 and FSCO website

*(**Note:** Only FST decisions pertaining to pensions are included in this section)*

*(**Note:** In this section, "Commission" refers to the Financial Services Commission of Ontario).*

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c.P.8, as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c.28 (the "*Act*");

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to refuse to make an Order under section 87 of the *Act* respecting a request by Mr. David Horgan relating to the **Ontario Public Service Pension Plan, Registration Number 208777**;

AND IN THE MATTER OF a Proposal by the Superintendent of Financial Services to refuse to make an Order under section 87 of the *Act* respecting a request by Mr. Rupinder Anand relating to the **Ontario Public Service Employees' Union Pension Plan, Registration Number 1012046;**

AND IN THE MATTER OF a Hearing in accordance with subsection 89(8) of the *Act*.

BETWEEN: DAVID HORGAN and RUPINDER ANAND
Applicants
- and -
SUPERINTENDENT OF FINANCIAL SERVICES
- and -
ONTARIO PENSION BOARD
- and -
OPSEU PENSION TRUST
Respondents

BEFORE:

Ms. Martha Milczynski,
Chair of the Tribunal and Member of the Panel
Mr. Louis Erlichman,
Member of the Tribunal and Member of the Panel
Mr. William Forbes,
Member of the Tribunal and Member of the Panel

HEARING DATE:

July 11, 2001
(North York, Ontario).

REASONS FOR DECISION

Nature of Application

The applicants in this matter, Mr. David Horgan and Mr. Rupinder Anand (together the "Applicants") each requested a hearing before the Financial Services Tribunal in respect of the Notice of Proposal issued to each applicant by the Superintendent of Financial Services ("Superintendent"). The Notices of Proposal indicated that, in the case of Mr. Horgan, the Superintendent was refusing to issue an order

under section 87 of the *Pension Benefits Act* (the "*Act*") directing the Ontario Pension Board ("OPB") to pay a pension benefit to Mr. Horgan under the terms of the Ontario Public Service Pension Plan ("OPS Plan"). In the case of Mr. Anand, the Superintendent was refusing to issue an order under section 87 of the *Act* directing the OPSEU Pension Trust ("OPT") to pay a pension benefit to Mr. Anand under the terms of the Ontario Public Service Employees' Union Pension Plan ("OPSEU Plan").

The Superintendent's grounds for the refusals stated in each Notice that section 80 of the *Pension Benefits Act* applied to Mr. Horgan and Mr. Anand, and by virtue of subsection 80(3) of the *Act*, their employment was deemed not to have been terminated. For reasons set out below, the Tribunal affirms the Superintendent's termination and Orders as proposed.

Facts

The Applicants were employed in the Property Assessment Office of the Ministry of Finance until December 31, 1998. Mr. Horgan was a member of the OPS Plan; Mr. Anand was a member of the OPSEU Plan.

Pursuant to the requirements of the *Ontario Property Assessment Corporation Act* and the terms of the Memorandum of Understanding between the Minister of Finance and the Ontario Property Assessment Corporation ("OPAC"), effective 12:01 a.m. on December 31, 1998 ("Memorandum of Understanding"), the property assessment functions of the Ministry of Finance and the Ministry's assets, leasehold and other interests or property associated with the property assessment operations were transferred to OPAC.

As part of this transfer and as contemplated by the Memorandum of Understanding, on or about December 15, 1998, each of the Applicants received an offer of employment from OPAC to be effective December 31, 1998. Each of the Applicants accepted the offer of continued employment under substantially similar terms and conditions of employment. Pursuant to each of their respective offers of employment, Mr. Horgan and Mr. Anand would cease being employed in the Ontario Public Service and continue with OPAC in their positions with the same job titles, at the same rate of pay - the difference being that for pension purposes, each would commence participation in the Ontario Municipal Employees Retirement System ("OMERS") rather than the OPS Plan or OPSEU Plan where their benefits accrued to the effective date of the transfer would remain. In addition, the Applicants' years of service in the Ontario Public Service would be carried over and included in their service with OPAC.

As of the time of the transfer, Mr. Horgan and Mr. Anand were eligible to retire under the "Factor 80" provisions of the OPS Plan and OPSEU Plan. On December 16, 1998, Mr. Anand signed a Notice of Election advising that he was retiring from his employment effective December 30, 1998. On December 17, 1998, Mr. Horgan signed a Notice of Election advising that he was retiring from his employment effective December 31, 1998. Both Applicants continued to work for the Ministry and, as at December 31, 1998, continued working for OPAC. However, both Applicants sought also to receive payment of their pension benefits from either of the OPS Plan or OPSEU Plan as applicable.

The OPB as administrator of the OPS Plan and OPT as administrator of the OPSEU Plan refused to pay the Applicants any pension ben-

efits and advised, in each case, that although eligible for "Factor 80" benefits, and notwithstanding their Notices of Election, neither Mr. Horgan nor Mr. Anand had "retired". In the circumstances of each case, the OPB and OPT advised that section 80 of the *Pension Benefits Act* applied such that notwithstanding the transfer of the Ministry's property assessment functions to a new employer, Mr. Horgan and Mr. Anand's employment with the Ministry was deemed not to have been terminated pursuant to ss.80(3) of the *Act*.

The Applicants each requested the Superintendent to order the plan administrator to commence payment of pension benefits. In the case of Mr. Horgan, by Notice of Proposal dated July 12, 2000, the Superintendent refused to order that the OPB pay Mr. Horgan pension benefits as he requested. By Notice of Proposal dated January 4, 2001, the Superintendent refused to order OPT to pay Mr. Anand pension benefits as he requested. The Superintendent found no basis in the case of either the OPB or OPT that the administrator failed to comply with the requirements of the *Act* or regulation made thereunder.

At the request of the Applicants and on the consent of the other parties, the Tribunal ordered that the hearings in respect of both matters be joined and heard concurrently.

Pension Benefits Act

The relevant provisions of the *Act* are as follows:

> 80. (1) Where an employer who contributes to a pension plan sells, assigns or otherwise disposes of all or part of the employer's business or all or part of the assets of the employer's business, a member of the pension plan who, in conjunction with the sale, assignment or disposition becomes an employee of the successor employer and becomes a member of a pension plan provided by the successor employer,
>
> (a) continues to be entitled to the benefits provided under the employer's pension plan in respect of employment in Ontario or a designated province to the effective date of the sale, assignment or disposition without further accrual;
>
> (b) is entitled to credit in the pension of the successor employer for the period of membership in the employer's pension plan, for the purpose of determining eligibility for membership in or entitlement to benefits under the pension plan of the successor employer; and
>
> (c) is entitled to credit in the employer's pension plan for the period of employment with the successor employer for the purpose of determining entitlement to benefits under the employer's pension plan.
>
> 80. (3) Where a transaction described in subsection (1) takes place, the employment of the employee shall be deemed, for the purposes of this *Act*, not to be terminated by reason of the transaction.

Issues

All parties agreed that to determine whether the Applicants were entitled to receive payment of pension benefits in the circumstances of this case, the Tribunal would be required to determine the following issues:

1. Was there a sale, assignment or other disposition of all or part of the business or all or part of the assets of the Ministry, the Applicants' former employer, to OPAC?

2. If the answer to issue (1) is yes, did the Applicants become employees of the successor employer, OPAC, in conjunction with the sale, assignment or disposition of the business?
3. If the answer to issues (1) and (2) are yes, what are the consequences that flow from this transaction under subsections 80(1) and 80(3) of the *Act*?

Issue 1 Was there a sale, assignment or other disposition of all or part of the business or all or part of the assets of the Ministry, the Applicants' former employer, to OPAC?

There is no doubt, having regard to the provisions of the *Ontario Property Assessment Corporation Act*, the terms of the Memorandum of Understanding and the facts surrounding the transfer of operations, that the nature of the transaction between the Ministry of Finance and OPAC fits squarely within the type of transaction contemplated by section 80(1) of the *Pension Benefits Act*. The Tribunal does not accept counsel for the Applicant's submissions that section 80(1) of the *Act* applies only to transfers affecting "for profit" business operations. The *Act* applies to all pension plans registered in Ontario and makes no such distinction in that regard as to whether or not the plan sponsor is a "for profit" or a "not for profit" entity.

In this case, the entire property assessment operation of the Ministry of Finance was transferred to OPAC and as part of this transfer the assignment or disposition of all of the assets associated with the Ministry of Finance's "business" of property assessment was also included.

Issue 2 If the answer to issue (1) is yes, did the Applicants become employees of the successor employer, OPAC, in conjunction with the sale, assignment or disposition of the business?

It is clear from the terms of the Memorandum of Understanding and the written offers of employment the Applicants received that each of Mr. Horgan and Mr. Anand became an employee of OPAC as part of or in conjunction with the overall transfer of the property assessment operation from the Ministry of Finance to OPAC. There was no other reason but this transaction or transfer of property assessment functions that caused the Applicants' employment to cease with the Ministry of Finance and commence with OPAC. Consequently, as at 12:01 a.m. on December 31, 1998 each of the Applicants became employed by OPAC who became the "successor" employer of the Applicants for the purposes of subsection 80(1) of the *Act*.

Issue 3 If the answer to issues (1) and (2) are yes, what are the consequences that flow from this transaction under subsections 80(1) and 80(3) of the *Act*?

In this matter, the Tribunal has found on the first two issues that the transfer of property assessment functions from the Ministry of Finance to OPAC was a transaction described by subsection 80(1) of the *Act*:

(a) the transfer of property assessment function from the Ministry of Finance to OPAC was (i) an assignment or other disposition of all or part of the Ministry's business; and (ii) was also the assignment or other disposition of all or part of the assets associated with that business;

(b) the Applicants became employed by OPAC as part of or "in conjunction with" the transaction; and

(c) OPAC became the "successor employer" for the purposes of the *Act*.

Subsection 80(3) of the *Act* is unambiguous - where a transaction described in subsection 80(1) takes place, the employment of the employee who became employed by the successor employer in conjunction with the transaction, is deemed, for the purposes of the *Act* not to be terminated by reason of the transaction. The Applicants are deemed not to have had their employment with the Ministry of Finance terminated by reason of the transaction.

Consequently, for the purposes of subsection 80(1):

(a) each of the Applicants remain entitled to benefits accrued under the OPS Plan or OPSEU Plan as the case may be;

(b) each of the Applicants is entitled to credit in OMERS for the period of membership in the OPS Plan or OPSEU Plan as the case may be, for the purposes of determining eligibility for membership in or entitlement to benefits under OMERS; and

(c) each of the Applicants is entitled to credit in the OPS Plan or OPSEU Plan, as the case may be, for the period of employment with OPAC for the purposes of determining entitlement to benefits under either of the OPS Plan or OPSEU Plan as the case may be.

Subsections 80(1) and 80(3) provide important protection for eligibility and benefit entitlement related to service for pension plan members affected by transactions like the transfer between the Ministry of Finance and OPAC.

The very purpose of section 80 is to protect employees in a transfer or sale of business situation by deeming pension plan membership to be continuous as between the predecessor and successor employer.

Had the transfer between the Ministry of Finance and OPAC not occurred, the Applicants would not have transferred their employment from the Ministry to OPAC and they would not have had any entitlement to trigger a retirement under a Factor 80 pension without actually terminating their employment. Subsection 80(3) deems the Applicants' employment to continue for the purposes of the *Act* as between the Minister of Finance and OPAC without a termination having been caused by the transaction. The Applicants are thus in the same position as they would have been in had the transfer not occurred and their employment simply continued with the Ministry of Finance. Under those circumstances, the Applicants cannot retire and commence receiving payment of a pension benefit without terminating employment with or retiring from OPAC.

Similarly, by virtue of subsection 80(3) of the *Act* an employee affected by the transfer between the Ministry of Finance and OPAC could not exercise the termination/portability provisions of section 42 of the *Act* without terminating employment with OPAC.

As noted above, the very purpose of section 80 is to protect employees in a sale, assignment or transfer of business situation by deeming pension plan membership and credits to be continuous for eligibility and entitlement purposes as between predecessor and successor employers. Without the deeming provision of subsection 80(3) of the *Act*, transferred employees would be treated as terminated employees for pension purposes and lose the valuable grow in rights

and entitlements associated with continuous plan membership.

ORDER

Accordingly, for the reasons noted above, the Superintendent's Notice of Proposal dated July 12, 2000, and Notice of Proposal dated January 4, 2001, whereby the Superintendent refused to issue an order directing the OPB and the OPT to pay the Applicants pension benefits are affirmed and the application to the Tribunal to make such order is dismissed.

DATED at North York, Ontario, this 1st day of August, 2001.

Ms. Martha Milczynski
Chair of the Panel

Mr. Louis Erlichman
Member of the Panel

Mr. William Forbes
Member of the Panel

INDEX NO.: FST File No. P0130-2000

PLAN: Imperial Oil Limited Retirement Plan (1988), Registration Number 347054 (the "IOL Plan"), and the Imperial Oil Limited Retirement Plan for Former Employees of McColl-Frontenac Inc., Registration Number 344002 (the "MFI Plan")

DATE OF DECISION: September 10, 2001

PUBLISHED: Bulletin 10/3 and FSCO website

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*(**Note:** Only FST decisions pertaining to pensions are included in this section)*

*(**Note:** In this section, "Commission" refers to the Financial Services Commission of Ontario).*

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the "*Act*");

AND IN THE MATTER OF Partial Wind Up Reports submitted by Imperial Oil Limited to the Superintendent of Financial Services respecting the **Imperial Oil Limited Retirement Plan (1988), Registration Number 347054 (the "IOL Plan"), and the Imperial Oil Limited Retirement Plan for Former Employees of McColl-Frontenac Inc., Registration Number 344002 (the "MFI Plan")**;

AND IN THE MATTER OF a Hearing in accordance with subsection 89(8) of the *Act*;

BETWEEN: IMPERIAL OIL LIMITED
Applicant
- and -
SUPERINTENDENT OF FINANCIAL SERVICES
Respondent

BEFORE:

Mr. Colin H.H. McNairn,
Vice Chair of the Tribunal and Chair of the Panel

Mr. Louis Erlichman,
Member of the Tribunal and of the Panel

Mr. William M. Forbes,
Member of the Tribunal and of the Panel

APPEARANCES:

For Imperial Oil Limited:

Mr. J. Brett Ledger
Ms. Lindsay P. Hill

For the Superintendent of Financial Services:

Ms. Deborah McPhail
Ms. Frederica Rotter

HEARING DATE:

July 25, 2001
(North York, Ontario).

REASONS FOR ORDER

The Background

This proceeding was initiated by the Applicant by filing a Notice of Request for Hearing with the Tribunal. The Request calls into question a Notice of Proposal by the Superintendent to refuse to approve partial wind-up reports filed by the Applicant in connection with the partial

wind-up of two of its pension plans, namely its IOL Plan and its MFI Plan (the "Plans"). Those wind-ups had been ordered by the Superintendent because of the reorganization of the Applicant and the closure of one of its refineries, all during the period from February 4, 1992 to June 30, 1995 (the "Partial Wind Up Period").

The stated grounds for the Notice of Proposal include the following:

- the reports do not reflect the liabilities associated with all of the members of the Plans whose employment with the Applicant was terminated during the Partial Wind Up Period; and
- the reports fail to provide "grow-in benefits," pursuant to section 74 of the *Act*, in respect of all members of the Plans affected by the partial wind ups who earned benefits while working in Ontario and whose combination of age and years of service with the Applicant is at least 55.

By a Notice of Motion dated June 29, 2001, the Applicant moved for an order of the Tribunal directing the Superintendent to answer certain interrogatories that it had posed and to produce the documents requested in those interrogatories.

The Issues

At a pre-hearing conference held on June 19, 2001, the parties agreed, in anticipation of the motion, that the issues in this proceeding that are relevant to the motion should be framed, for the purposes of the motion, as follows:

Issue 1

(a) Did any members or former members of the Plan[s] who ceased to be employed by Imperial Oil Limited during the partial wind up period as set out in the Notice of Proposal cease to be employed as a result of the reorganization or discontinuance of all or part of Imperial Oil Limited's business, if their circumstances fell within one of the following:

(i) employees whose fixed term contract of employment was complete by its terms (e.g. summer students, co-op students, and employees hired on a contract basis for a specified period of time);

(ii) employees who became disabled and received disability benefits;

(iii) employees who allegedly voluntarily resigned;

(iv) employees who were transferred to an affiliated company that did not participate in the Plans;

(v) employees who retired under the terms of the Plans at normal retirement age;

(vi) employees who retired under the disability retirement provisions of the Plans;

(vii) employees whose employment was terminated as a result of death; and

(viii) employees whose employment was allegedly terminated for cause.

(b) Do the doctrines of legitimate expectation, abuse or improper exercise of discretion or estoppel apply in the circumstances of this case with respect to the issue of which members and former members must be included in the partial wind up group?

Issue 2

(a) Does the *Pension Benefits Act* (Ontario) (the "*Act*") require that "grow-in benefits" under section 74 be granted to members and former members of the partial wind up group who were employed in a province other than Ontario or Nova Scotia on the date that their employment ceased, in relation to any prior periods of employment with Imperial Oil in Ontario or Nova Scotia? If so, on what basis should such benefits be calculated?

(b) If the answer to issue (a) is "yes," can periods of employment in provinces other than Ontario or Nova Scotia be excluded when calculating the "grow-in benefits" under section 74 of the *Act* and section 79 of the *Pension Benefits Act* (Nova Scotia) payable to all members and former members whose employment ceased in Ontario or Nova Scotia?

(c) If the answer to issue (a) is "yes," do the doctrines of legitimate expectation, abuse or improper use of discretion or estoppel apply in the circumstances of this case with respect to the calculation of "grow-in benefits" under section 74 of the *Act* and section 79 of the *Pension Benefits Act* (Nova Scotia) for members who ceased to be employed in the circumstances set out in issue (a)?

There is a third issue that will have to be addressed at the main hearing in this proceeding, but none of the interrogatories to which the Applicant wants answers relates to that issue.

The Interrogatories

Some of the interrogatories posed by the Applicant have been answered by the Superintendent to the satisfaction of the Applicant. Other interrogatories do not now require answers in light of certain modifications to the detailed grounds for the Superintendent's Notice of Proposal that were agreed by the Superintendent at the pre-hearing conference.

The First Set of Interrogatories

The first set of interrogatories to which the Applicant continues to insist on responses can be summarized as follows:

- how many partial plan wind ups were ordered by the Superintendent during the period January, 1988 to October, 2000 pursuant to,
  - paragraph 69(1)(d) of the *Act* (significant number of members of the plan ceasing to be employed as a result of discontinuance or reorganization of business),
  - paragraph 69(1)(e) of the *Act* (discontinuance of a significant portion of the business at a specific location)?
- how many situations were there in respect of such wind ups (ordered under each of the noted paragraphs of the *Act*) where employees were terminated during the partial wind up period for the following reasons;
  - the expiry of a fixed term contract of employment;
  - disability;
  - voluntary resignation;
  - transfer to an affiliated company that did not participate in the Plans;
  - retirement at normal retirement age under the terms of the Plans;
  - early retirement under the terms of the Plans;

- retirement due to disability under the terms of the Plans;
- death; and
- cause for dismissal?

- how many wind-up reports (in respect of wind ups ordered under each of the noted paragraphs of the *Act*) included employees in any such category in the partial wind-up group?
- did the Superintendent refuse to approve any partial wind up reports (in respect of wind ups ordered under each of the noted paragraphs of the *Act*) because the employees in any such category were not included in the relevant partial wind-up group?

The test that we have adopted for ordering answers to interrogatories and the disclosure of documents is that the information sought is arguably relevant to an issue in the proceeding that is not a frivolous issue, that the information is sufficiently particularized to facilitate a response and that the information does not enjoy the benefit of privilege (see *Monsanto Canada Inc. v. Superintendent of Financial Services et al.*, FST File Number P0013, FST Decision Number 3, June 2, 1999).

The Applicant maintained, among other things, that the answers to the interrogatories set out above were arguably relevant to the issue of whether the doctrines of legitimate expectation, abuse or improper exercise of discretion or estoppel apply, in the circumstances of this case, so as to affect the determination of which members or former members of the Plans should be included in the partial wind up groups (Issue 1(b) above). The Superintendent responded by saying that none of those doctrines can have any application in this case and that her office does not make inquiries about the individual circumstances of plan members who cease to be employed during a partial wind up period. We note that there is nothing in the *Act*, the Regulation under the *Act* or the FSCO Pension Guidelines that would suggest that a partial wind up report is expected to set out the circumstances of members or former members of the pension plan who have ceased employment with the employer during the partial wind up period and are included in or excluded from the partial wind up group. The only guidance offered by any of these sources as to the proper composition of the partial wind up group is very general, namely that the group should include those members "affected by" the partial wind up (see section 1.2.3 of FSCO Pension Guideline W100-101) or should include those members who have ceased employment "as a result of" the event that precipitated the partial wind up (see page 2 of FSCO Pension Guideline W100-301).

What the Applicant hopes to be able to argue, depending on the answers revealed by the interrogatories, is that the Superintendent has not generally taken the position that any of the categories of employees referred to in the interrogatories should be included as part of a partial wind up group and, therefore, cannot now do so (at least without some advance notice of a change of practice), given the doctrines of legitimate expectation, abuse or improper exercise of discretion and estoppel. The Applicant would also argue that in the event of any ambiguity in the provisions of the *Act* relating to the proper make-up of a partial wind up group, the practice of the Superintendent could be a relevant factor in arriving at a proper interpretation of those provisions.

The first set of interrogatories relates to situations where the Superintendent plays two roles; first, in ordering a partial wind up of a plan and, second, in approving or refusing to

approve, the report in respect of such a wind up. In deciding on whether to order a partial wind up under paragraph 69(1)(d) of the *Act*, the Superintendent must focus on whether a significant number of members of a pension plan have ceased to be employed as a result of the discontinuance of part of the business of the employer or as a result of the reorganization of the business of the employer. It is certainly possible that, in some instances, the inclusion or exclusion of certain of the categories of employees, referred to in the interrogatories, may be determinative of the significance of the number of affected members of the plan. Indeed, the Superintendent has recently taken the position, in a proceeding before this Tribunal, that some, at least, of those who terminated their employment with an employer voluntarily during a partial wind up period should be included for the purpose of determining whether a significant number of employees are affected by a particular reorganization (see *London Life Insurance Company v. Superintendent of Financial Services et al.*, FST Decision Number 23, February 7, 2001). Thus, although the Superintendent may not make inquiries as to the circumstances of employees who cease to be employed during a partial wind up period, she has not always been neutral as to the inclusion or exclusion of some of the categories of employees referred to in the interrogatories.

Therefore, while there may not be a conscious and consistent practice on the part of the Superintendent as to the treatment of all or some of the categories of employees, referred to in the interrogatories, we think that the Applicant should have the opportunity of exploring the possibility that there is such a practice of a kind that would assist in making its proposed arguments. Although the existence of such a practice might be elicited through the evidence of actuaries and others who have dealt with the Superintendent's office in this regard, that would be a much less efficient way of demonstrating the practice than obtaining answers to the interrogatories and would likely prolong the hearing in this matter. This is a relevant consideration for us; see Rule 19.01(d) of the Interim Rules of Practice and Procedure of the Financial Services Tribunal.

The Superintendent also maintained that the answers to these interrogatories were not arguably relevant to any of the issues in this proceeding because none of the potential arguments of the Applicant, to which the interrogatories relate, was available to it in the circumstances of this case. With respect to the argument based on the doctrines of legitimate expectation and estoppel, the Superintendent said that this argument was foreclosed by the decision of the Ontario Divisional Court in *Monsanto Canada Inc. v. Ontario (Superintendent of Financial Services)* (2001), 198 D.L.R. (4th) 109, and by other judicial decisions.

We do not think that the settled law in Ontario on either of these doctrines is such as to preclude all realistic possibility of the Applicant successfully relying on such a doctrine as against the Superintendent in a proceeding, such as this, involving an application of the *Act*. Although *Monsanto* also arose under the *Act*, the issues and circumstances were quite different from those in this proceeding. Therefore, we conclude that the answers to the first set of interrogatories are arguably relevant to Issue 1(b) and that Issue 1(b) is not frivolous.

The Second Set of Interrogatories

The second set of interrogatories to which the Applicant continues to insist on answers involve questions about the practices, policies

and internal documents of the Superintendent with respect to the acceptance or refusal of partial wind up reports in which grow-in benefits are provided (and the method of calculation of the relevant benefits), and reports in which such benefits are not provided, in either case for employees who were:

- employed by the employer in Ontario or Nova Scotia at some time but were employed elsewhere at the time their employment with the employer ceased;
- employed by the employer in Ontario or Nova Scotia when their employment with the employer ceased but had been employed elsewhere during their term of service with the employer.

These interrogatories also ask about the practices, policies and internal documents of the Superintendent concerning the reduction of grow-in benefits, in either of the above situations, on account of service outside of Ontario and Nova Scotia. In the event that there are policies and internal documents on the subject, the Applicant asks for copies.

The Applicant maintained that the answers to these interrogatories are arguably relevant to the issue of whether the doctrines of legitimate expectation, abuse or improper exercise of discretion or estoppel apply, in the circumstances of this case, to affect the calculation of grow-in benefits for members of the Plans who were working outside Ontario and Nova Scotia at the time their employment with the Applicant ceased but who worked in Ontario or Nova Scotia at some time during their term of service with the Applicant (Issue 2(c)). The Applicant also says that the answers are potentially relevant should we find that there is any ambiguity in the provisions of the *Act* that determine the entitlement to grow in benefits of those working outside Ontario and Nova Scotia at the time of a partial wind up but who previously worked in either of those provinces.

The Superintendent maintained, among other things, that the answers to these interrogatories are not arguably relevant to the issue relating to the effect of the doctrines of legitimate expectation and estoppel because the decision of the Ontario Divisional Court in *Monsanto* and other judicial decisions precluded the Applicant's potential argument on that issue. The Superintendent also claimed privilege and confidentiality for internal documents prepared for the Minister of Finance and the Superintendent containing advice and discussion with respect to Issue 2 matters, arguing that those documents were of tenuous relevance in any event.

We come to the same conclusion on the first of these positions of the Superintendent as we did in respect of her comparable position on the first set of interrogatories. We do not think that the settled law in Ontario on legitimate expectation or estoppel is such as to preclude any realistic possibility of an argument based on either of those doctrines succeeding against the Superintendent in a case, such as this, involving the application of the *Act*. Therefore, we conclude that the answers to the second set of interrogatories are arguably relevant to Issue 2(c) and that Issue 2(c) is not frivolous.

As to the second position of the Superintendent, we conclude that she is not entitled to object to the disclosure of documents in proceedings before this Tribunal on the basis that they constitute confidential material prepared for a Minister or other government official. If the law of privilege were to apply to any of those documents, say because they represent confidential communications to the Crown from its

counsel, the Superintendent would be entitled to resist disclosure.

ORDER

We order the Superintendent to respond to the first and second sets of the Applicant's interrogatories in this matter within six weeks of the date of this order, subject only to the qualification that the Superintendent need not produce any documents or reveal any communications to which the law of privilege applies.

DATED at North York, Ontario, this 10th day of September, 2001.

Colin H.H. McNairn,
Vice Chair of the Tribunal and Chair of the Panel

Louis Erlichman,
Member of the Tribunal and of the Panel

William M. Forbes,
Member of the Tribunal and of the Panel

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